

CA24N
XC2
-73H21



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114662158>

720°

I #74

Ontario Legislative Assembly. Select
Committee on the New Ontario
Hydro Building (4)

Hearings. v. 12. Sept. 10 - Sept. 12, 1973

2212

LEGISLATURE OF ONTARIO

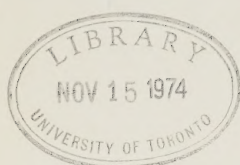
SELECT COMMITTEE

HYDRO HEADQUARTERS

Monday, September 10, 1973

Morning session

2215-2240



5912-2165

Sept. 10, 1973
10.10-10.15 a.m.
M.P.

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

H - 2215 - 1

The committee met at 10.10 a'clock in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order. I understand, Mr. Shibley, that Mr. Smith is your first witness? Am I correct?

Mr. Shibley: That is correct, sir. I would ask Mr. Don Smith to come to the witness box.

Mr. Chairman: Welcome back, Mr. Smith, it seems like some months since we last saw you and I guess it is, but we have been here in the interval.

Mr. Smith: Have you?

Mr. Chairman: You are represented again by Mr. Brownlie? Are there any other counsel in the room other than the ones that have been here all the way along? Mr. Genest, I recognize your face and voice. Are there any other new counsel?

Mr. Solway: Yes, Mr. Chairman. My name is Solway - S-o-l-w-a-y - I represent Mr. Cronyn.

Mr. Chairman: All right. You can stay where you are if you want, that is really the press table.

Mr. Solway: I prefer to line up with the press rather than stand all the time.

Mr. Chairman: All right, as long as the press don't object. I know there is not much desk room and there are not too many press here today, so I think you are fine where you are. Thank's Mr. Solway.

I think we are all in order now and have the attention of all of you - Mr. Shibley, if you would proceed, sir.

H - 2215 - 2

Mr. Shibley: Mr. Chairman, before I proceed with the examination of this witness, I want to advise the committee that I have been conducting an on-going investigation into certain matters which will become apparent in the course of Mr. Smith's evidence.

Part of this on-going investigation included a request, through Mr. Brownlie, for a meeting with Mr. Smith, Mrs. Shuttleworth, and Mr. Grant, of Ellis-Don, and such a meeting was arranged for Friday of last week. I understand that because of some misunderstanding on the part of Mr. Brownlie that Mr. Grant did not attend, but Mr. Smith and Mrs. Shuttleworth did attend my office on Friday of last week and advised me at that time, after I made inquiry as to Mr. Brownlie, that he was not coming to the interview on their instructions.

I desisted from speaking to them further until I telephoned Mr. Brownlie, who in fact confirmed that he was instructed not to attend the interview and, on the other hand, had no objection to my proceeding with the interview with Mr. Smith and with Mrs. Shuttleworth.

I thereupon did go on with that interview and some of the things that emanated ~~from~~ from it will again, as I say, become apparent in the evidence of Mr. Smith.

Now just before going on, Mr. Smith, am I correct in the outline I have given the Chairman as to the circumstances surrounding the interview of Friday?

Mr. Smith: Yes, that's right.

Mr. Shibley: You specifically instructed Mr. Brownlie not to come with you and he had no objection to your being interviewed without counsel?

Mr. Smith: Yes, that's true.

Mr. Shibley: Now then, Mr. Smith, am I correct that the ~~very first matter which I raised with~~

(Mr. Shibley)

~~2216-1~~ very first matter which I ~~also~~ raised with you was whether there was an additional letter written by you in the month of April, 1972. Did I raise that with you?

Mr. D. Smith: Yes, you did.

Mr. Shibley: And you then responded that you did write a letter dated April 17, 1972. Is that correct?

Mr. D. Smith: Yes.

Mr. Shibley: And that that letter was written to Mr. Cronyn?

Mr. D. Smith: Yes.

Mr. Shibley: When I asked you what the letter contained, you then produced the letter to me. Is that correct?

Mr. D. Smith: Yes.

Mr. Shibley: And I will be exhibiting that letter later, Mr. Chairman, through ~~me~~ this witness, but the letter which you produced to me at the outset of that exchange was a letter dated April 17, from Mr. Smith to Mr. J. B. Cronyn, addressed to Mr. Cronyn, of John Labatt Ltd., 451 Ridout Street North, London, Ontario. Now then, this was the first occasion, Mr. Smith, on which a copy of that letter had been produced to me. Is that correct?

Mr. D. Smith: Yes.

Mr. Shibley: I ~~was~~ want to ask you about the circumstances surrounding the failure to produce the letter and also when you first discussed its lack of production to me, and in that connection, I want to take you ~~back~~ back to June 28~~th~~, I am sorry, June 27 and June 28, which were the days on which you gave evidence, Mrs. Shuttleworth gave evidence, David Brant gave evidence, and John Cronyn gave evidence. Now do you remember Thursday, the 28th of June, as it relates to any events surrounding this particular letter?

Mr. D. Smith: Yes.

Mr. Shibley: Would you please tell the committee what transpired on June 28, 1972~~th~~, 1973, I am sorry.

Mr. D. Smith: Well, I gave my testimony that you

Sept. 10/73
10:15-10:20 am
PLG

(Mr. D. Smith)

are aware of. Do you want me to go into my testimony?

Mr. Shibley: No. What I am interested in knowing is when was the first occasion in that period of time when the letter of April 14, 1972, was discussed between you and anyone else?

Mr. D. Smith: I think it was first discussed, I think it was out in the member's lounge -- I am not positive of that, Mr. Shibley, it could have been out on the street.

Mr. Shibley: You mean in the members' lounge here?

Mr. D. Smith: It could have been in the members' lounge here...

Mr. Shibley: Or out on the street...

Mr. D. Smith: Or out on the street.

Mr. Shibley: On Wellesley Street.

Mr. D. Smith: Yes. Or just outside the building.

Mr. Shibley: And on what day was that?

Mr. D. Smith: That was on the Thursday.

Mr. Shibley: The 28th of June.

Mr. D. Smith: Yes.

Mr. Shibley: And was that during a recess of this committee? A luncheon recess?

Mr. D. Smith: Yes. I think it was the lunch. It was after we had testified.

Mr. Shibley: When you say after "we", you mean after you and Anne Shuttleworth?

Mr. D. Smith: No, and after Mr. Grant had testified too.

Mr. Shibley: All right. He hadn't finished his testimony as yet. Well in any event...

~~Mr. D. Smith: Yes, I think it was the lunch. It was after we had testified.~~
~~Mr. Shibley: When you say after "we", you mean after you and Anne Shuttleworth?~~
~~Mr. D. Smith: No, and after Mr. Grant had testified too.~~
~~Mr. Shibley: All right. He hadn't finished his testimony as yet. Well in any event...~~
Tape H 2217 follows

September 10, 1973
10.20 - 10.25 a.m.
M.R.

(Mr. Shibley)

~~Mr. Smith: I thought he had. That was my~~
impression.

Mr. Shibley: But let's go on: ~~That~~ This was
the occasion of discussing the April 14 —

Mr. Smith: I think we were with John Browlie and
Mrs. Shuttleworth dropped back on the sidewalk and said,
"Dave Grant remembers that there was another letter to Cronyn."

Mr. Shibley: Yes.

Mr. Smith: And I said, "No, there wasn't".
I said, "I don't remember any letter to Cronyn." She said, "Well,
he thinks he remembers one." And I said, "Well, I don't remember
one at all. ~~There~~ I can't remember anything in it. I can't
remember a letter at all." And she said, "Well, he's sure he
does." And I said, "Well, I don't know what it is, and you don't
remember what's in it." And Grant said no, he didn't, ~~or~~
something like that. ~~So~~ So I said, "Well, okay, let's wait
till we get back to the office and let's see what it is."

Mr. Shibley: And so you did wait...

Mr. Smith: I was quite alarmed at the time when
they told me that I didn't believe that there was another
letter at that time.

Mr. Shibley: All right. Well then, you returned
in the afternoon following that ...

Mr. Smith: I think I returned in the morning,
Friday morning.

Mr. Shibley: I see. It may have been a recess,
then, before the luncheon recess when this was first raised
in the ~~Members'~~ ~~Members'~~ lounge?

Mr. Smith: No, it was after I thought it was;
we were out on the street going over ...

Mr. Shibley: To have lunch?

Mr. Smith: It was after he had testified anyway.

September 10, 1973
10.20 - 10.25 a.m.
M.R.

Mr. Shibley: Let's put it this way: It was during the luncheon recess of June 28 that you had those conversations. Is that correct?

Mr. Smith: I don't -- I remember it was after we had all testified and I don't -- whether that was after the luncheon recess or not, I'm not sure.

Mr. Shibley: Mr. Brownlie.

Mr. Brownlie: Mr. Chairman, if my memory serves me correctly, the committee did not sit in the afternoon. Therefore, the luncheon break would be -- you ended at Thursday noon at ^{10.15}~~10.20~~ approximately and resumed again Tuesday morning after the July 1st weekend.

Mr. Shibley: Thanks ^{you}~~very~~ much. Other than the discussion that was held during the luncheon period, had you had an earlier discussion during the morning break in the Member's Lounge? About the letter?

Mr. Smith: No.

Mr. Shibley: Mr. Brownlie?

Mr. Brownlie: I think he was not involved in the conversation you are alluding to.

Mr. Shibley: I see. All right. You were not involved in any such conversation at the morning recess? That's as far as you can say.

Mr. Smith: No, I don't recall.

Mr. Shibley: All right. Then you went back to your office and what did you do?

Mr. Smith: I went back to the office I think Thursday afternoon

Mr. Shibley: Just before you do that - I gather that what Dave Grant was saying over lunch that day was, "there is another letter that Shibley hasn't got." Is that the gist of ...

Mr. Smith: He said he thought there was another letter that Mr. Shibley didn't have and I said I didn't think there was.

September 10, 1973
10.20 - 10.25 a.m.
M.R.

Mr. Shibley: All right. Now then, you went back to the office and what did you do? What was the next event?

Mr. Smith: We got out the file and looked in it to see if there was one and there was one.

Mr. Shibley: And that's the letter of April 14, 1972.

Mr. Smith: Yes.

Mr. Shibley: What did you do about it?

Mr. Smith: I just about flipped when I — because I said, "If this letter comes out, this will attack my credibility in front of the committee." And I said, "I don't know what to do about it."

Mr. Shibley: Did you have any other concern respecting that letter? Or putting it another way, was there anyone else ~~concerned~~ about whom you had concern respecting that letter?

Mr. Smith: Oh yes.

Mr. Shibley: Who?

Mr. Smith: Mr. Cronyn.

Mr. Shibley: What was your concern in his regard?

Mr. Smith: I don't know what my concern was in — possibly the fact that — well, I thought I should show it to him anyway and let him know about it.

Mr. Shibley: All right.

Sep. 10/73
10.25 to 10.30 am
fvk

(Mr. Smith)

Mr. Shibley: And did you show it to him?

Mr. Smith: Yes, I did.

Mr. Shibley: When was that?

Mr. Smith: I'm just not sure but I think it was on the Saturday or Sunday of the long weekend.

Mr. Shibley: That's the same weekend that we're talking about. That would be June 30, ^{or} July 1, July 2. Is that right?

Mr. Smith: Yes.

Mr. Shibley: And on that weekend did you also have Mrs. Shuttleworth and her husband as guests at your cottage?

Mr. Smith: No, we didn't have them as guests at ours.

Mr. Shibley: Were they up at the cottage?

Mr. Smith: They ^{dropped in} ~~came~~ in on the Saturday afternoon and ^{and then} ~~they~~ ^{actually} had a swim. They didn't stay for a meal, ~~they~~ they dropped in again on Sunday afternoon and had a swim also.

Mr. Shibley: Did you tell Mrs. Shuttleworth that you were going to show John Cronyn the letter?

Mr. Smith: Yes, I did.

Mr. Shibley: You had the letter with you on that long weekend?

Mr. Smith: Yes, I did.

Mr. Shibley: And did you take the letter over, on the long weekend, to John Cronyn and let him read it?

Mr. Smith: Yes.

Mr. Shibley: So that would be either the Saturday or Sunday of the long weekend in question?

Mr. Smith: Sunday morning rings ^{a bell} ~~as possible~~ as possibly the time I saw him.

Mr. Shibley: That would be on the ~~next~~ ^{last} Sunday, July 1, is that correct?

Mr. Smith: Yes. I'm not going to swear one way or another. It could have been Saturday or Sunday.

Sep. 10/73
10.25 to 10.30 am
fvk

Mr. Shibley: Now then what discussion did you have with John Cronyn respecting the production of that letter?

Mr. Smith: I told him that I was rather upset, I'd found this letter. I didn't realize that you didn't have a copy of it and that I was quite concerned. I thought the committee had everything but the one letter of the July ^{1st} or except the July letter and I said I was quite concerned and I said: "If this comes out this will ~~may~~ attack my credibility in front of the ~~may~~ committee and they won't know what to believe if they think you've concealed something." So I told him that I was not going to produce it -- at that time anyway, and he said he didn't see any point in producing it, or he agreed with me.

Mr. Shibley: Yes. So that between the two of you a decision was taken that that letter would not be produced to me?

Mr. Smith: I think it was my decision and he concurred with it. I would accept the risk. I wasn't worried about any contents of the letter. As I said to you last Saturday there was nothing --

Mr. Shibley: Last Friday.

Mr. Smith: Last Friday; there was no reason. The main thing I was worrying about was my credibility, having just told you that I had produced everything for you. That's what I was concerned about.

Mr. Shibley: Was there anything else ^{said} ~~made~~, as between yourself and Mr. Cronyn, respecting that letter?

Mr. Smith: No, not that I recall.

Mr. Shibley: In any event, in respect of all subsequent testimony following that long weekend, you were aware of the letter. Is that correct?

Mr. Smith: After the long weekend?

Mr. Shibley: Yes.

Mr. Smith: Yes, I was aware of it.

Mr. Shibley: And Mrs. Shuttleworth was aware of the letter?

Mr. Smith: Oh yes.

Mr. Shibley: And John Cronyn was aware of the letter?

Sep. 10/73
10.25 to 10.30 am
fvk

Well,

Mr. Smith: ~~He'd~~ ^{Well,} seen it that day so he ~~wasn't~~ ^{wasn't} ~~there~~ ^{there} ---

Mr. Shibley: And David Grant was aware of the letter?

Mr. Smith: Yes.

Mr. Shibley: And going down the list again, and each of those four people, namely, yourself, Mrs. Shuttleworth, Mr. Grant and Mr. Cronyn all knew that the letter had not been produced to me?

Mr. Smith: Yes. All knew at that time.

Mr. Shibley: Yes, and they continued to know that thereafter?

Mr. Smith: Yes.

~~Mr.~~ Mr. Shibley: I want to go back with you, Mr. Smith. Who made up the file of documents that was originally produced to me? ~~It was the photocopies?~~

(Tape H-2219 follows)

Sept. 10/73
10.30 to 10.35 am
DT

~~Mr. Smith: I am sorry, the photocopies of your file which was originally produced to me?~~
I am sorry, the photocopies of your file which was originally produced to me?

Mr. Smith: I think MR. Grant had them made up.

Mr. Shibley: He had them made up. Who selected the documents that would form part of the file that was produced to me?

Mr. Smith: I would.

Mr. Shibley: You did?

Mr. Smith: Yes.

Mr. Shibley: And with respect to the July 14 letter, was it your decision that that letter would not be produced to me among the documents originally produced?

Mr. Smith: Yes, it was my decision.

Mr. Shibley: And with respect to the letter of April 14, 1972, ^{to} which we have been referring this morning, was it your decision also that that letter would not form part of that file?

MR. Smith: Yes, that was my decision.

Mr. Shibley: Well, when ~~the decision was taken~~ was the decision taken in respect to those documents, the two letters? Can you pinpoint it in time?

Mr. Smith: Well, ^{within} I think about a day or so, I guess.

Mr. Shibley: I beg your pardon?

Mr. Smith: I guess within about a day or so.

Mr. Shibley: Of what?

Mr. Smith: I came back from three weeks in Europe --

Mr. Shibley: Right.

Mr. Smith: And despite the committee or Hydro, I have a fairly large business to run and, as previously mentioned, we have over \$200 million worth of work under construction and the problems these days in that industry are of a very great magnitude, as you can realize. I came home and there had been a serious problem at a large contract in London. There had been a serious problem at the Bank of Canada job in Ottawa and there had been other things. I run the business, I keep track of the whole thing myself. I have competent people, but if you look at my time, I am on the go all the time, and

Sept. 10/73
10.30 to 10.35 am
DT

(Mr. -Smith)

Raye Grant came into me and said, "Look, we have got to send ~~some~~ stuff down to Shibley." ~~It~~ It was within a couple of days of coming back -- you know, maybe one or two days or three days or something like that, I think.

Mr. Shibley: Can you give ^{me} the month that's in question?
Was that June of 1972, ^{I think} or 1973?

Mr. Smith: May of 1973.

Mr. Shibley: May of 1973?

Mr. Smith: Yes. Anyway I had been back a couple of days and things were in a great turmoil and he came into my office about -- I believe about 11 o'clock one morning, and said, "Look, we have got to go through this and send it down to Shibley." I said, "Well, I don't think that's relevant, I don't think that's relevant, and I've got a couple of more papers in here that ~~are~~ I don't think are relevant," and I said, "They don't contribute anything under the terms of reference of the hearing." I didn't think they were that pertinent. The hearing has ~~not~~ got much more complicated than I ever thought and I have never been to a hearing before so I took them out. ~~At~~ At least, I didn't send them down to you, and that selection process probably took three or four minutes because I ~~wasn't~~ hardly ~~sat~~ down at my desk and he came in and there were other people waiting, and I just went through like that and said, "I don't think that's pertinent" --

Mr. Shibley: Yes.

Mr. Smith: So I -- it was done that quickly.

Mr. Shibley: Did you have --

Mr. Smith: I didn't have a day or a half ^a day to sit down and ~~analyze~~ analyze everything.

Mr. Shibley: Did you have conversation with Mr. Cronyn in early June -- I think on June 3rd of this year, referable to the evidence to be given before this committee? I think that's already in evidence, Mr. Smith.

Mr. Smith: Yes, I am just thinking of the date.

Mr. Shibley: Both you and Mr. Cronyn pegged June 3rd as the date of a discussion you had.

Mr. Smith: Yes

Sept. 10/73
10:35-10:40 am
PLG

(Mr. Shibley)

~~but you and Mr. Cronyn discussed this and the other side of it~~

~~Discussion you had~~

~~Mr. D. Smith: Yes~~

Mr. Shibley: On that occasion did you discuss with Mr. Cronyn the two letters of April 14, 1972 and the letter of July 14, 1972?

Mr. ~~D.~~ Smith: No, I did not.

Mr. Shibley: Was Mr. Cronyn aware ~~of the letter of April 14, 1972~~ can you tell us, from anything that formed part of your conversations with him, whether he was aware of the letter of April, 1972 as at the time this committee was convened?

Mr. ~~D.~~ Smith: Was he aware of it? I don't think he was aware of it.

Mr. Shibley: Do you know whether he was aware of it as at the time you were giving your testimony on the first occasion?

Mr. ~~D.~~ Smith: No, I don't think he was aware of it then.

Mr. Shibley: Was he aware of it ~~when~~ ?

Mr. ~~D.~~ Smith: He told me on the July 1st weekend that he didn't remember ever seeing that letter.

Mr. Shibley: You are talking about which letter.

Mr. ~~D.~~ Smith: July 1st this year when I went over to see him and I showed it to him. He told me he hadn't remembered getting the letter. He told me he hadn't remembered it.

Mr. Shibley: He said he had not remembered it.

Mr. ~~D.~~ Smith: He said, "I don't remember the letter and it is unimportant" or something. He told me that he did not remember getting that letter.

Mr. Shibley: Had you discussed the two letters with Anne Shuttleworth at any time prior to her giving her testimony?

Mr. ~~D.~~ Smith: No because as I told you on Friday, I didn't realize that letter existed myself. I had gone through the thing and not sent it to you, but I believe recalling that you asked me did I have contact in April with Cronyn, I thought maybe

Sept. 10/73
10:35-10:40 am
PLG

(Mr. D. Smith)

in earlier testimony, I am not sure of it. I didn't think, I didn't recall that letter existing at any time.

Mr. Shibley: Was the letter that we have been talking about typed by Anne Shuttleworth?

Mr. D. Smith: Yes, I believe it was. I believe he said it was.

Mr. Shibley: Now then, you are saying, however, that it was not part of any discussion on June 3rd with Mr. Cronyn, that these two letters

Mr. D. Smith: No, definitely not. I never discussed any ~~letters~~ letters with Mr. Cronyn.

Mr. Shibley: On June 3rd.

Mr. D. Smith: On June 3rd. Yes.

Mr. Shibley: ~~Referred to the letter~~ With respect to the July 14 letter, it was produced to me following the weekend of June 23, June 24 of this year.

Mr. D. Smith: That's right.

Mr. Shibley: And did you over the course of that weekend, including the Friday that this committee was not sitting, which would be June 22, June 23 and June 24, did you effect a review of your files referable to any other documents not yet produced to me?

Mr. D. Smith: No, I didn't. I didn't look at anything that weekend. I had a management meeting in Toronto, and I didn't.

Mr. Shibley: Mr. Smith, did you have meetings with persons in London over that weekend?

Mr. D. Smith: No.

Mr. Shibley: Referable to the affairs of this committee?

Mr. D. Smith: No. No, I was in Toronto all that weekend at a management meeting that I conducted the entire weekend.

Mr. Shibley: Did you have any discussions over that weekend referable to the proceedings of this committee, either in London or in Toronto, with Mr. Cronyn?

Mr. D. Smith: No, I didn't.

Mr. Shibley: Or with Mrs. Smith?

Mr. Brownlie: Do you mean his wife?

Mr. Shibley: I am sorry, Mrs. Shuttleworth.

Mr. & D. Smith: No. I didn't talk to any of them that weekend because I came down Friday afternoon. I don't think I went home.

Mr. Shibley: Have you any information respecting any form of communication, either in London or elsewhere, respecting the documentary productions, or any matter for that matter, referable to this committee hearing?

Mr. D. Smith: I am sorry?

Mr. Shibley: I will ask the question again. Have you any information as to communications effected over that weekend

Tape H 2221 follows

September 10, 1973
10.40 - 10.45 a.m.
M.R.

(Mr. Shibley)

~~as to discussions affected over that weekend~~ referable
to these proceedings?

Mr. Smith: No, no, I didn't discuss the proceedings
at all ~~anywhere~~ with anybody.

Mr. Shibley: I didn't ask you about your
discussions. I'm asking about whether you have information
as to ~~on~~

Mr. Smith: No, I don't.

Mr. Shibley: ~~on~~ as to discussions between others.

Mr. Smith: No, I don't.

Mr. Shibley: Does that include Monday of that
weekend? The 25th?

Mr. Brownlie: No, no. Excuse me.

Mr. Smith: Monday I came down I think and I met
with Blake Cassels.

Mr. Shibley: I'm sorry Mr. Brownlie.

Mr. Brownlie: I ~~believe~~ believe that's already
in testimony that on Monday afternoon they arranged to come in, and —
that was Monday afternoon that I ^{first} got involved in it. It was
Tuesday he came down to Toronto and discussed it, with us.

Mr. Shibley: I'm particularly interested to know
Mr. Smith, whether having ~~on~~ I'm taking it that the July 14
letter, which was produced to me following that weekend, was a
letter that came under some discussion over the weekend. Was
it not?

Mr. Smith: No.

Mr. Brownlie: Which weekend?

Mr. Shibley: The weekend of June 23, 24.

Before it was produced.

Smith:

Mr. Brownlie: No, that might have been Monday,

Mr. Shibley: ^{if} I did discuss it at the office.

I would discuss it probably — I don't know, I would probably
discuss it with Dave Grant or — I mentioned to you on the
Thursday before that I thought there was some confusion in

September 10, 1973
10.40 - 10.45 a.m.
M.R.

(Mr. Smith)

McAuliffe's or Manthorpe's - I was trying to figure out where they might have thought of the threat or told to keep quiet and I mentioned to you that it came to me that Thursday that it might have related to a conversation with Mr. Barnicke and that made me think of that letter.

Mr. Shibley: I don't think you mentioned Mr. Barnicke to me, but you did say it might have related to another conversation.

Mr. Smith: Oh, all right. Okay. Yes, I think I said another - that's right, I did not mention to you - I said another conversation.

Mr. Shibley: Yes.

Mr. Smith: And then I went back and got that letter out and

Mr. Shibley: Neither did you mention there was another letter until the following Monday when it was produced by Mr. Brownlie, Tuesday.

Mr. Smith: Oh, all right. Well, I just say it was ~~produced~~ a conversation with another conversation that made me think of it.

Mr. Shibley: Yes and that's what made you go back and ^{dig} ~~take~~ out the July 14 letter. Is that right?

Mr. Smith: That's right.

Mr. Shibley: And what ~~that~~ letter set aside, so to ~~me~~ speak, at that time?

Mr. Smith: No, I think it was left in the file.

Mr. Shibley: I see. Was the April 14 letter still in the file?

Mr. Smith: It was a different file.

Mr. Shibley: You had set that one in a different file?

Mr. Smith: The one was in the "private and confidential" one.

Mr. Shibley: Yes.

September 10, 1973
10.40 - 10.45 a.m.
M.R.

Mr. Smith: — And the other one was still in the Hydro file.

Mr. Shibley: Which was in the private and confidential file?

Mr. Smith: The one that - July 14th.

Mr. Shibley: I see.

Mr. Smith: I didn't get out the Hydro file and go through it and I'm sorry that - at least, to the best of my recollection I didn't get it out at that time.

Mr. Shibley: Well, I'm going to ask you very particularly - have you any knowledge or information of any communications with Mr. — in which Mr. Cronyn was involved over the weekend of June 23, 24, and including Friday, Monday and Tuesday, because I don't think we sat that Tuesday? —

Mr. Smith: *No ~~remember~~ I don't recall —*

— that you recall
Mr. Shibley: *over that five-day period referable*
to these two letters?

Mr. Smith: No.

Mr. Shibley: You have no information as to that?

Mr. Smith: Not to my knowledge I don't.

Mr. Shibley: But you have no information?

Mr. Smith: No. I have no information
I ~~don't~~ know what you're getting at but I can't think of anything.

Mr. Shibley: What I want to know, Mr. Smith, whether there was any activity whatever over that weekend?

Mr. Smith: With Mr. Cronyn?

Mr. Shibley: Which related to the proceedings of this committee?

Mr. Smith: No. There was nothing. I can tell you what I did every hour of that whole weekend.

Sept. 10, 1973
10.45-10.50 a.m.
M.F.

H - 2222 - 1

~~Mr. Smith: No, I have none at all.~~

~~What is the subject of this letter?~~

~~Mr. Smith: No, I have none at all.~~

~~What is the subject of this letter?~~

Mr. Shibley: And you have no information as to the activities of others?

Mr. Smith: No, I have none at all. I worked the entire week end.

Mr. Shibley: Over the long week end of June 30th, July 1st and July 2nd, when the April 14 letter was under discussion, was anyone other than yourself, Mr. Cronyn, Mrs. Smith -----

Mr. Brownlie: Mrs. Shuttleworth?

Mr. Shibley: Mrs. Shuttleworth, Mr. Grant and Mr. Brownlie a participant in any discussion referable to that letter?

Mr. Brownlie: Mr. Brownlie was not a participant.

Mr. Shibley: I am sorry. He mentioned that you were on the way with him. I am sorry, Mr. Brownlie. Leaving Mr. Brownlie out of that list ?

Mr. Smith: No, there was nobody else.

Mr. Shibley: I see. I didn't ask you if there was anyone else there. I want to know whether over the long week end the subject of the April 14 letter was a matter of any form of communication with anyone else than the four of you?

Mr. Smith: No.

Mr. Shibley: And that --in order to be complete-- would extend to the Thursday afternoon, Friday, Saturday, Sunday and Monday of the interval before this committee ~~met~~ ^{continued} on July 3rd ?

Mr. Smith: Right.

Mr. Shibley: No other person was in any way active respecting the matter?

Mr. Smith: No.

H - 2222 - 2

Mr. Shibley: Mr. Smith, you have already testified that at the noon recess of June 28 when we rose at noon that day, that it was Mr. Grant who brought it to your attention that there was another letter not yet produced to me?

You have already said that?

Mr. Brownlie: No, that is not what he said.

Mr. Smith: I thought I said it was either Mrs.

Shuttleworth or Mr. Grant.

Mr. Shibley: Well, Mr. Grant had mentioned it to Mrs. Shuttleworth, who in turn mentioned it to you? Is that correct?

Mr. Smith: Yes.

Mr. Shibley: So that Mr. Grant was aware of the fact it had not been produced on that occasion?

Mr. Smith: Yes. He said he thought there was another letter that had not been produced.

Mr. Shibley: And do you know how he would have been aware of that fact?

Mr. Smith: No, sir.

Mr. Shibley: Or when he became aware of it?

Mr. Smith: No, sir.

Mr. Shibley: When you gave your testimony on June 20th, were you aware then that you had not produced to me the April 14 letter?

Mr. Smith: Mr. Shibley, I didn't recall that letter. I didn't recall the existence of that letter until I was shown it. If you had asked me any time during any of the testimony, "Was there another letter?" I would have denied it. I did not recall that letter. It was - if you had asked me outside of here, "Is there another letter?" "Is there one April 14th?" I would have said, "No."

~~Mr. Shibley: I am sorry, I did not recall that letter.~~

~~Mr. Smith: I am sorry, I did not recall that letter.~~

~~Mr. Shibley: I am sorry, I did not recall that letter.~~

Sept. 10/73
10.58 to 10.55 am
DT

Mr Smith)

Mr. Shibley: I see.

Mr. Smith: If you had said, is there a letter April 14th? I would have said I don't recall one, and then I would have gone back to look and found one but I did not realize that you didn't have everything but the one letter.

Mr. Shibley: That's what I want to find out about, Mr. Smith. Is ~~that~~ your testimony that you had forgotten that you had ~~withdrawn~~ withdrawn the April 14 letter as at the time you were giving your testimony on June 20, June 21, June 27, 1973?

Mr. Smith: Yes, sir, that's my testimony.

Mr. Shibley: You had forgotten about it?

Mr. Smith: Yes, I definitely had forgotten about it. I think you ~~can~~ remember ^{that} I thought it was ~~a little~~ insignificant thing and I guess ~~insignificant~~ insignificant things don't stay in your mind or something.

Mr. Shibley: I am producing to you the letter of April 14th, 1972, Mr. Smith.

Mr. Chairman: That will be exhibit number 232.

Mr. Shibley: I should say "photocopy" of it. Is that the letter to which the whole of your testimony has been directed this morning when I have referenced a letter of April 14, 1972, from yourself to Mr. Cronyn?

Mr. Smith: Yes, sir.

Mr. Shibley: And this is the letter which was produced to me for the first time at our meeting on Friday last in the morning?

Mr. Smith: That's right.

Mr. Shibley: ~~Now, I want to~~ Mr. Chairman, I want to go through this letter quickly and then I will come back to its content later.

"Dear John:

I have given further information to Ken Candy, chief architect of Ontario Hydro who think our proposal an attractive one. Since putting in our proposal we have checked it over completely with

Sept. 10/73
10.50 to 10.55 am
ET

(Mr. Shibley)

auditors and our financial people, and we are convinced it is a good proposal. We are willing to open our books and estimates to Hydro to show them exactly what they will be getting for their money. In other words, they will not be paying \$27.00 a square ~~foot~~ foot but a \$25.00 a square foot building. We think we can do the best job for Hydro, having completed many large contracts recently on or ahead of schedule. I would appreciate any direction you might give me as to who I might talk to concerning this at this time. " And there is a postscript: "I have just talked to Colin Brown who is talking to ~~George~~ George Gathercole, who said he was going to be talking to Darcy McKeough in the next month and thought we are one of the proposals being seriously considered. I would appreciate it if you could put in a good word with Darcy for me. I will also work on it myself."

Now, Mr. Chairman, I am anxious that it be recorded temporarily that I have been in communication with Mr. ~~McKeough~~ McKeough yesterday, and it will be his evidence --

Mr. Chairman: Now, Mr. Shibley, you say it will be his evidence. ~~As~~ This concerns me a little bit, I have just read this letter. Certainly the committee hasn't considered this before. I am concerned whether we are just going down another path in regard to this, and I want some ~~time~~ time to draw the ¹²hearings to a close, and every time we bring up another name, you say this is going to -- that it will be his evidence. Now, I think, Mr. Shibley, with all due respect that maybe the committee should be discussing who we are going to call next and things of this nature. Now, you say you have been talking to Darcy McKeough. He may want to give evidence and this is fine but ^{they} the committee may decide ~~we~~ may or may not want to hear him. But I am a little ~~xx~~ alarmed when we look at our time schedule.

(H-2224 to follow)

Sep. 10/73
10.55 to 11.00 am
fvk

(Mr. Chairman)

~~... the committee was discussing this, and they were to have a meeting. But it is a 10.45 meeting and it is a 10.45 meeting.~~

~~scheduled~~ On the strength of a letter that refers to somebody just talking to Colin Brown who, in turn, has talked to George Gathercole who, in turn, has been talking to Darcy McKeough that, on the strength of that ^{you} ~~we~~ feel we must call Darcy McKeough. Now, as I say, I'm concerned with our time element we must be through this by October 2. When I say "through," we must have our report in by the time the House meets and, so, when you say we will be calling Darcy McKeough, it may be that the committee will want to consider whether it wants to call him.

Mr. Shibley: I'll get back to that point. What I'm most concerned about is to record, contemporaneously, with the publication of this letter, that Mr. McKeough did not put in a good word. I'm sorry, that Mr. Cronyn --

Mr. Genest: Mr. Brown.

Mr. Shibley: No, no, no, it's Mr. Cronyn. ^{That} Mr. McKeough has informed ^{me} that Mr. Cronyn did not put in a good word with Mr. McKeough on behalf of Mr. Smith.

Mr. Chairman: I'm really not concerned whether he did, or didn't, put in a good word for Mr. Smith, because this is a typical politician's letter that many of us write all the time. What I am concerned about is the fact that just because he's there that we have decided to call him, or that you have decided ^d to call him. Now, on this basis, and this is what's bothered me all the way along, and I'm disturbed this morning because I just thought we were nicely coming to the end of this and we do have a schedule lined up for getting it closed. Now, if this opens it up to about six or seven other new names on the ^{same} strength that we've called them to date, this thing can go on forever and ever. If you recall, that was one of my first objections in connection with this evidence, that ~~was~~ every time a name was mentioned it resulted in calling another person. Now, sometime along the line this has got to come to an end and that's all I'm saying. Mr. Deans.

Sep. 10/73
10.55 to 11.00 am
fvk

Mr. Deans: Mr. Chairman, before Mr. Shibley answers you, I want to point out that we don't have to have a report on October 2. That it's surely more important that the report that we turn in be complete and accurate and have pursued all of the avenues which may well be questioned by the public, than that we, in the interest of getting a report, not pay attention to something which obviously was intended to influence the government.

Mr. Shibley: No, that's not the point.

Mr. Deans: No, I'm talking about the statement.

Whether it did, or not, is the question we have to ask and the statement could be interpreted.

Mr. Shibley: I'm sorry, Mr. Deans.

Mr. Deans: Look, don't interrupt me. All right? You can say what you want to say after I'm finished.

Mr. W. Hodgson: You must have had a bad weekend, eh?

Mr. Deans: I've not had a bad weekend.

Mr. Chairman: ^{well} Mr. Deans has the floor now.

Mr. Deans: I'm just interested in making sure that the truth comes out, and if Mr. McKeough is prepared to say that Mr. Cronyn didn't address him in any way then Mr. McKeough should be given the opportunity to say that. That's important to us and if that takes five or 10 minutes or half an hour or half a day then it should be done, because it's important for the complete report that we have to turn in and I don't think we should get ourselves hung up again today on arguing among ourselves about whether or not we are going to be finished by October 2.

Mr. Chairman: Well, I am concerned, Mr. Deans. You may not be concerned and, as you say, there may not be any great date, but we've been going on for four months now and all summer long we've been going and every time a ~~new name~~ name is mentioned it results in a call. I'm quite happy to have Mr. McKeough called, but, what bothers me at ~~this~~ this point that this is a new name that has just come into the picture at a time when we thought we ~~were~~ were drawing our list of witnesses to a close and, I see,

Sep. 10/73
10.55 to 11.00 am
fvk

(Mr. Chairman)

it brings Mr. Gathercole's name in again, Mr. Colin Brown. I'm not prepared, as Chairman of this, without an argument, to, at this point, bring Mr. Gathercole back although he's coming back on another matter, but to bring Mr. Colin Brown in ^{it} ~~in~~, to bring Darcy McKeough and goodness knows who many more they might open up. In other words we can go forever on that basis.

Mr. Renwick: Perhaps we could just carry on for the moment, Mr. Chairman, and see where we get to.

Mr. W. Newman: Excuse me, Mr. Chairman.

Mr. Chairman: Certainly, the chairman has spoken ^{off who} and I don't ^{want to cut} ~~think~~ anybody ~~else~~ ^{else} may want to speak.

Mr. W. Newman: Yes, Mr. Chairman, I'd just like to make a comment here. You know, Mr. Shibley has been working very hard. Quite obviously he has been interviewing a lot of people over this past weekend from what I gather in what he said this morning and I'm just wondering, perhaps, if maybe ^{with} I'm at a loss to know exactly where we are going with this new letter put in here. I'm at a loss to know who all he did interview over the weekend. I'm at a loss to know exactly what direction we're going into ^{with} this committee. ~~Perhaps Mr. Chairman~~

(Tape H-2225 follows)

Sept. 10/73
11:00-11:05 am
PLG

(Mr. Wm. Newman)

~~Mr. Chairman, I am going to ask you to call Mr. Shibley to the stand and ask him if he is taking us as a committee, or where he is taking us as a committee, because I at this point in time am not ^{just} sure of what we are leading into next. The line of questioning this morning left doubts in my mind as to exactly what direction ^U when he pursued the holiday weekend at such great length, ~~there~~ ^F there must be some significance which I don't know about, and I feel that as a committee member I would like to know ⁱⁿ just what direction we are going, ~~maybe~~ ^{perhaps} we could have a short executive session so that Mr. Shibley could explain to us exactly where we are going.~~

Mr. Chairman: Well, we can do it. I am expressing my concern publicly here, but simply on the strength of a name in a letter, again, ~~and~~ Mr. Shibley had on ~~his~~ ^{his} own, decided to call this man, which was contrary to the decision that we had looked at as to the list of witnesses that we had yet to hear. Now certainly as Chairman I don't want to be the one who is appearing to object to the calling of Darcy McKeough. I don't object to that at all, but what I do think ^{is} at this point we have got to start taking some direction from the committee as to who is going to be called and how long and how many more, because on this basis we can go on indefinitely.

Mr. Shibley: Mr. Chairman, I must tell you that I am going to proceed now with a line of examination that I think goes right to the heart of the evidence as to the issue of the threat. I should point out to this committee that the transcript of evidence to this point establishes a conflict of evidence as between Mr. Manthorpe and Mr. McAuliffe on the one hand, and as to the evidence of Mr. Cronyn and the Ellis-Don people on the other hand. That conflict is as follows: Mr. Manthorpe testified

Sept 18/73
11:00-11:05 am
PLG

(Mr. Shibley)

that some time during the week of November 27, Smith called him anonymously and told him someone close to the Premier's office had called and told him to be quiet. That evidence has been contradicted as to the timing of the call and as to the content in respect of someone close to the Premier's office. Mr. McAuliffe wrote an article wherein he reported Mr. Smith as saying: "Someone high in the Progressive Conservative party and close to the Cabinet had told him that he should keep his mouth shut or he wouldn't get another government contract." That evidence has similarly been contradicted by Mr. Smith and the Ellis-Don people. I am not sure about Mr. Cronyn's contradictions in that respect. I think he ~~denied~~ making any ~~any~~ yes, he contradicts it. He says: that all he said to Mr. Smith was, "Be factual and don't repeat ~~hearsay~~ ~~hearsay~~." Now, if there is evidence directed to the credibility of John Cronyn, Mr. Smith, Mrs. Shuttleworth and Mr. Grant, which will assist this committee in a determination as to whether their testimony regarding the timing of the call from Mr. Cronyn and regarding the content of that call, as compared with the evidence given by Mr. ~~Manthorpe~~ Manthorpe and Mr. McAuliffe, if there is evidence directed to the credibility of these witnesses, then it is probably the most salient evidence available upon what everybody has said is the key issue regarding which the Premier established this committee. I intend to demonstrate through examination of-- I am sorry, a re-examination ~~of~~ ^{of} Mr. Smith, Mr. Grant, Mrs. Shuttleworth and Mr. Cronyn that in the face of this document and its content, ~~the~~

Tape H 2225*3 2226 follows

September 10, 1973
11.05 - 11.10 a.m.
M.R.

(Mr. Shibley)

~~the evidence~~ the evidence ^{they} ~~had~~ previously gave requires explanation on their part.

Mr. Chairman: Well,

Mr. Shibley: I say to you, Mr. Chairman, the only reason I have mentioned Mr. McKeough at this time is that I was most anxious ~~that~~ in the context of a news report that this sort of communication was effected, that the press and the public be aware at the same time that, although Mr. Smith was asking Mr. Cronyn to intercede for him with Daroy McKeoughs, ~~that~~ in fact, there was no such intercession as far as Mr. McKeough is concerned. I think it's important to Mr. McKeough that that be recorded at this time by me ~~and~~ I think it's important it be recorded personally by him, because it also goes to the weight of that evidence that Mr. McKeough rather than someone else is establishing that as a matter of record.

Now the other thing about the postscript is that it was a fact in evidence that George Gathercole did go to Japan with ~~Garcy~~ McKeough in the latter part of April, 1972. And the content of the postscript is quite accurate in that respect. ~~And~~ I intend to examine Mr. McKeough respecting conversations between ~~him~~ ^{him} and Mr. Gathercole vis-à-vis the Hydro building on that trip.

~~So that~~ and as far as I am concerned, as I say, ~~as the witness has said, it goes to the matter of~~ credibility of a number of people. Now, I am not engaging upon this avenue of questioning lightly, Mr. Chairman. I think that if the evidence of Mr. Manthorpe and Mr. McAuliffe is accepted in the sense of what actually was said to Smith and the time at which it was said to Smith can be taken as what they report Smith as having told them on the occasion of those communications, that completely answers the issue as to the threat.

September 10, 1973
11.05 - 11.10 a.m.
M.R.

Mr. Chairman: Well, I

Mr. Shibley: The confusion in that respect emanates from the contradictions developed by the very witnesses whose integrity is now being examined into.

Mr. Chairman: Well, Mr. Shibley, as I say, I appreciate what you are saying and I certainly realize the reason for it. I think many of the committee members have their own ideas already as to the credibility of most of the witnesses whom we have heard.

Now, I'll say what just suddenly took me aback is your mention that, by reason of a footnote of this nature, ~~that~~ you should have decided without discussion with the committee that you thought it was necessary on the basis of that to call Mr. Darcy McKeough.

Now, as a chairman of the committee, I certainly have no objections to the committee calling anybody they want to. But, at this point, when we are trying to bring these ²hearings to a conclusion, after very exhaustive and thorough study, it was very upsetting to me to have three or four more names. I guess it's only three, two additional and one recall, put in to the possibility of having us to try and hear their testimony.

~~Now~~ It seems to me at this point that perhaps this should be a committee decision when we are changing a plan already made - the plan of hearing witnesses, rather than sort of telling us at this point that these people you will be ~~calling~~ calling without first consulting with us.

However, I asked you to go ahead but Mr. Henderson wants to come into the picture.

Mr. Henderson: Mr. Chairman, Mr. Shibley, in looking at the last seven words of this footnote on the end, "I will also work on it myself," I would hope that you plan on questioning the witness.

Mr. Shibley: I certainly do, Mr. Henderson.

September 10, 1973


11.05 - 11.10 a.m.

7 R

Mr. Henderson: Very good. I'll leave it at that.

Mr. Shibley: I will get back to the letter itself,

Mr. Henderson, you can believe that. At the moment, I am
concerned however to review



H-2227 to follow

Sept. 10, 1973
11.10-11.15 a.m.
M.F.

H - 2227 - 1

(Mr. Shibley)

~~Mr. Henderson, you can believe that, at the moment, as a~~
~~committee, however, to review the circumstances surrounding~~
the existence of this letter against the background of the
testimony of four people when this letter was known to them.

Mr. Henderson: Mr. Chairman, I just leave it with you
and with the committee members to consider those last seven words,
and I would hope sometime during your questioning, Mr. Shibley,
that you would bring this out. ¹¹ Was there political pressure as
the author of this letter had suggested, or that is the
interpretation I take of this, that he was going to exert -----

Mr. Chairman: Mr. Henderson, don't do anything to urge
him to prolong it.

Mr. Henderson: Well fine, but I am certainly interested
in those seven words. It would indicate to me that political
pressure was going to be put to bear, and the author of this
letter puts that in his letter.

Mr. Chairman: That's what politicians are for, Mr.
Henderson, as you and I know, and that's, I suppose, why it is
upsetting to outsiders but pretty nearly every call I receive as
a politician is from somebody who wants me to do something for
~~them~~ put in a good word with the minister, or see if they can't
get preference in a housing list, or something, and this is the
very nature and essence of being a politician and that is what
so many of us boast about when we go throughout our ridings that
we are able to do things for our constituents.

Now I suppose in doing things it means that we are
getting them some sort of preference that they might not
otherwise be entitled to, so when I see things like this in a
letter they do not upset me because these are the kind of letters
that we are all involved with every day of the week. ¹¹ To the
average person on the street it may be upsetting, but to just
think on the strength of this it is going to protract our hearings

H - 2227 - 2

(Mr. Chairman)

for some length, I think I had a right maybe to become short-tempered and I apologize to the committee.

Mr. Shibley: Mr. Chairman, may I say that I can't imagine anyone having done a better job as Chairman of this committee than you have done, but I must tell you -----

Mr. Chairman: I ~~was~~ thought this was going to be my last Monday, I hope it still will be.

Mr. Shibley: I had hoped that we might finish this week also but I have been alert for a long time to the need to penetrate the problem of the conflict of evidence I have mentioned.

I think, Mr. Chairman, you have not recalled what I recall by reason of having spent something like 20-odd hours over this week end reading transcripts, and that transcript indicates repeated questioning directed to the matter of ~~complete~~ complete production of documents, and I don't want to comment on it because I think it should be dealt with verbatim.

I was quite alert to the need to canvass with these four witnesses, including Mr. Cronyn, the question of complete coverage of production of documents. There is an instance, Mr. Chairman, when a great hue and cry having been raised on June 29th, Mr. Cronyn had no opportunity to prepare, etc., you yourself gave very explicit direction to Mr. Cronyn that on the resumption of his testimony following that week end, he was to come prepared to tell about all the documents, and I will read it in also later, the very first thing I asked about following that same long week end was whether all documents were produced.

So the question of credibility is ~~is~~^a very serious one on that score. There have been repeated references also in the evidence to the fact ~~and~~ and this is from Mr. Smith, Mrs. Shuttleworth and Mr. Cronyn ~~that~~ that at no time was Mr. Cronyn asked to intercede on behalf of Ellis-Don. Now the postscript in this letter can only be characterized as a request for an

11.10-11.15 a.m.
M.F.

H - 2227 - 3

(Mr. Shibley)

intercession, and again, you will remember Mr. Cronyn's evidence that having regard for the position he held with government at the material time, he ~~made~~ made it clear to Smith early that he could do nothing for him, and Mr. Smith knew this during the period of time in question. He made it very early to him, I think, as early as 1971, and Mr. Smith has said repeatedly that he at no time asked for an intercession by Mr. Cronyn or anyone else.

~~Now I think there are questions~~

Tape H - 2228 follows

Sept. 10/73
11:15-11:20 am
PLG

(Mr Shibley)

~~said repeatedly that he at no time asked for an investigation by~~

~~Mr. Cronyn as anyone else.~~ I think these questions of credibility

have to be gone into, because it comes down, as I say, to a determination by this committee as to whether what Manthorpe said was reported to him by Smith was accurate as to content and time, and ~~at~~ ^{but} the contradictions of his evidence should not be given any weight by reason of the circumstances of this evidence.

I think it is equally important with respect to what Mr. McAuliffe reports as to what Smith told him respecting no further government jobs, because the only contradiction of that evidence ~~now appears to come~~ ^{came} from the very four people whose evidence is under review against the background of the nonproduction of this letter. I ask you also to remember that there were two letters not produced. This is one of two. The July 14 letter was only produced after the event and it is a question in my mind that requires investigation as to whether there was a calculated decision taken to withhold the only two documents in this file which affected Mr. Cronyn, and which put his evidence respecting the matters I have covered ^{which} gave some competing evidence. Let's leave it at that. Mr. Chairman, it may on a superficial review or on a spontaneous look at the letter, look like just another letter written to a ~~politician~~ politician, but it goes far deeper than that, I can assure you, having regard for what I have undertaken, as I say as a review of the evidence already given by these people.

Mr. & G. Hodgson. Mr. Chairman.

Mr. Chairman: Mr. ~~H~~ Hodgson.

Mr. R.G. Hodgson: I really have only one concern and that is counsel divulging or stating what a witness is going to testify, and I find that a little difficult.

Mr. Shibley. I requested Mr. McKeough's permission to do that and he agreed with me that I should disclose that to the committee today.

Mr. R.G. Hodgson: All right. ^{I question} ~~My point on that was~~ without the witnesses concerned.

Sept. 10/73
11:15-11:20 am
PLG

Mr. Shibley: I realize that Mr. Hodgson, and when I spoke to Mr. McKeough yesterday, I told him what was in the postscript, and I indicated to him my concern that it would be published at a point in time when no one would know, without his evidence, whether or not Mr. Cronyn had put in a good word with him for Smith, and I think he was at least as interested as I was to have recorded today, and it is with his permission that I have said what I have said, and it is to confirm that tomorrow that he is making himself available.

Mr. R. G. Hodgson: Well that is information I ~~would~~ ^{didn't} ~~wasn't~~ ^{privy} ~~wasn't~~ ~~to~~ ~~know~~.

Mr. Shibley: I realize that Mr. Hodgson, but I can assure you. The other thing I want to tell this committee is that as part of my efforts of last week, I had earlier in the week attempted to arrange a meeting with Mr. Eberle and Mr. Cronyn. I was advised that Mr. Eberle wanted to know the subject matter of the meeting that I was requesting. I then myself tried to get back to him personally; Mr. Bell had been attempting the communication. By the time I got in touch with Mr. Eberle, there was a change of circumstance; namely, that by that time I had received from Mr. Smith the ~~same~~ letter of April 14. I met with Mr. Eberle ^{late} Friday afternoon and let him read the letter in question, ~~said~~ that he also would ~~have~~ the opportunity to confer with Mr. Cronyn and have someone present here today while this evidence was being tendered. I have requested that Mr. Cronyn be available for examination. Mr. ~~Eberle~~ ~~Eberle~~ Eberle indicated he didn't know whether Mr. Cronyn would be available today, but I now understand from counsel that he would be available tomorrow and there is no difficulty in that respect, ^{But} again I assure the committee that when I run into this sort of thing, my first instinct is to alert those who are affected so that they may be represented and have the benefit of advice.

Tape H 2229 follows

Sept. 10/73
11.20 to 11.25 am
RT

(Mr. Shibley)

~~or that they may be represented and have enough time to say~~ and have the opportunity to say things to me which may clear up the record contemporaneously.

Mr. R. G. Hodgson: Mr. Chairman, might I also inquire of counsel, does he intend to clear Mr. Hanthorpe's evidence that was given -- or statement that was given to me with regard to a further telephone call in which he said no and which later evidence showed that he did have a further discussion?

Mr. Shibley: I haven't directed my mind to that one,
Mr. Hodgson. I have enough --

Mr. R. G. Hodgson: If we want to clear this whole area, I think --

Mr. Shibley: I don't mind telling you that I ~~was~~ spent -- in addition to all the things that have been mentioned, I was preparing the brief for all the other witnesses that we were going to try and cram through this week and if I seem a little bit impatient for the next while, then please ~~make~~ make me a little bit of a concession that I have had very few hours to even sleep over the last few days.

Now, Mr. Chairman, I don't know where we go from here.
It was my intention --

Mr. Chairman: Carry on, Mr. Shibley. All I was concerned about was the suggestion that you were going to call another witness without consulting with the committee, that's all --

Mr. Shibley: I would like to get that straightened out, Mr. Chairman. I at no time ~~committed~~ committed myself to a fixed list of witnesses by any stretch of my imagination.

Mr. Chairman: I know you didn't, but I think the committee has in mind where we want to go and I think you know that. Now, if you want to change the direction of the committee, then I think perhaps we should have another meeting.

Mr. Shibley: Well, Mr. Chairman, I just want to make it clear to you that what has been happening is for some time now I have been chasing down this question. It finally broke on Friday morning and if it had not broken, then perhaps the committee unhappily would not have had the benefit of this evidence. But it has broken and

Sept. 10/73
11.20 to 11.25 am
DT

(Mr. Shibley)

I can't have regard for the personal timetable of individual members of this committee as to examining into what I consider to be key~~ed~~ to a determination as to who made the alleged -- whether there was an alleged -- whether there was a threat, who made it and when it was made and I think this, as I say, is very cogent evidence directed to that question because, if you will remember, that it was only upon the contradictions created by the evidence of these four people, ~~etc.~~ the evidence of Mr. Manthorpe and Mr. McAuliffe, that the thought that the person in question was Mr. Cronyn was sort of second-guessed and what he said was also put in question by that contradiction.

Mr. R. G. Hodgson: Mr. Chairman, I second Mr. Renwick's suggestion that we get along with the witness ~~about~~ ^{before us.}

Mr. Henderson: Carried.

Mr. Shibley: Thanks, Mr. Henderson.

Mr. Chairman, may I suggest a 10-minute ^{break} I am a little weary right now.

Mr. Chairman: Do you want a recess?

Mr. Shibley: Yes.

Mr. Chairman: ~~OK~~ Fine. Until 25 to 12.

~~Mr. R. G. Hodgson: I am a little weary right now.~~

The committee resumed at 11:38 o'clock, am.
(H-2230 to follow)

September 10, 1973
11.38 - 11.40 a.m.
M.R.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order.

Mr. Shibley: Mr. Smith, I want you to have before you the transcript of June 27 in the morning session at Page 746-1. And before we deal with the transcript, I want to direct your attention to ~~one or two~~

Mr. Henderson: What page, Mr. Shibley?

Mr. Shibley: 746-1, that's of June 27 in the morning. Now then, Mr. Smith, looking at your letter of April 14, I put it to you that this was a letter wherein you were asking Mr. Cronyn to intercede on your behalf with Darcy McKeough. Is that not so?

Mr. Smith: No, that was not the purpose of the letter, Mr. Shibley.

Mr. Shibley: Well, aside from its other purposes, I direct your attention to the words "I would appreciate it if you would put in a good word with Darcy for me".

Mr. Smith: That wasn't the purpose of the letter, and that was merely added because I didn't know what Mr. McKeough had to do with the Hydro job. I didn't know anything about it. I just got a call ~~and~~

Mr. Shibley: But to the extent of that one line would you agree with me that that's a request that Mr. Cronyn intercede for you with Mr. McKeough?

Mr. Smith: No. I didn't consider it a request to intercede.

Mr. Shibley: What did you consider you were asking him to do?

Mr. Smith: I thought it was - I would refer ~~to~~ to it as a casual remark and that was all.

~~Mr. Shibley: Well, when you say "put in a good word"~~

Sep. 10/73
11.40 to 11.45 am
fvk

~~Mr. Smith: I don't know. They're not bad~~

~~contractors, or something like that. I didn't ask for any favour~~

Mr. Shibley: When you say: "Put in a good word", what do you mean?

Mr. Smith: I don't know. ~~They're not bad~~ contractors, or something like that. I didn't ask for any favour and I never followed it up. ~~I didn't know~~ ^{didn't} ^{What} connection ~~Mr. Makeough~~ ^{with Colin Brown} had. I told you on Friday the whole detail of this letter and why I hadn't put it in. I considered it to be a purely insignificant letter.

Mr. Shibley: Tell the committee about it then. You say: "I've just talked to Colin Brown." Did you, in fact, have a conversation with Colin Brown?

Mr. Smith: Yes, I imagine I had probably just talked to him a few minutes before.

Mr. Shibley: Yes, and had you called him?

Mr. Smith: No, he called me.

Mr. Shibley: He called you?

Mr. Smith: Yes, I think he called me.

Mr. Shibley: What was the discussion about as it related to Ontario Hydro?

Mr. Smith: I'll go into the ~~if~~ background of how

Mr. Deans: Could you identify Colin Brown?

Mr. Shibley: Would I ~~and~~ identify him? I can't identify him.

Mr. Deans: ~~Tell us about~~ ~~xxxxxx~~ Colin Brown just so that we all know who ~~a~~ we are talking about.

Mr. Smith: Colin Brown is a life insurance agent with the London Life and he is probably one of the - he is very well known. He is known around Toronto and he is probably the most successful agent with the London Life so he knows a lot of people. I guess all insurance agents do. Colin Brown is a good personal friend of mine. I have known him for 25 years anyway. Often, a couple of times a week we will have lunch at the London Club ~~and~~ and sit at the same table. He and I were the last two eating one day and I was saying something about Hydro. ~~I said~~ I

Sep. 10/73
11.40 to 11.45 am
fvk

(Mr. Smith)

didn't find out what was going on and I didn't know at what stage the contract stood at. I think this goes back to my previous evidence. I just didn't know what was going on. Colin said that George Gathercole was a friend of his and he would call him and ask him ~~and~~ I said: "Don't bother, you don't need to. You don't need to bother ~~because~~ I can't see that any good will come of it." He said: "I'll call him and see if he knows anything about it." I think he called him that day and, as I recollect, Mr. Gathercole was out that day and ~~he~~ ^{Colin} left a message for him to call back. A couple of days later Colin called me, about four o'clock in the afternoon, I guess, I don't know. I don't recall. He said he'd been talking to Mr. Gathercole ^{who was going to} ~~and~~ that we were being considered and that he was going to be talking to Mr. McKeough. I just happened to be writing this letter at the time. So I said: "Colin just called and put in a good word with Mr. McKeough." ~~So~~ I don't call that asking for a favour. Maybe you do. I don't.

Mr. Shibley: In any event, Mr. Smith, this postscript is accurate and true as to the communication between you and Mr. Brown and it's true to the extent that Mr. Brown reported to you that he had a conversation with Mr. Gathercole. Is that right?

Mr. Smith: Yes. That was the last I ever ~~had~~ heard of it. ^{I never heard any more} I didn't know what Darcy McKeough had to ~~do~~ do with it. I didn't know if he had anything to do with it to be honest with you. If you've got a committee it would be better they ^{would} think you were a good contractor rather than a bad one. I thought it was a very insignificant letter and that's why I didn't put it in I suppose.

Mr. Renwick: Mr. Chairman perhaps I could ask Mr. Smith whether he knew what position Darcy McKeough held in the government at that time.

Mr. Smith: I'm not sure, I thought ~~he~~ ^{he} was in Municipal Affairs, or finance, or something.

(Tape H-2232 follows)

H - 2232 - 1

(Mr. Smith)

~~I am not sure, I don't know the details of the Affairs, but I am~~
~~or something.~~

Mr. Shibley: Does Mr. Brown have any involvement with government himself?

Mr. Smith: No.

Mr. Shibley: Does he have any involvement beyond casting — or exercising his franchise in politics?

Mr. Smith: Well, you must know as well as I do how he takes ads in the Globe and Mail and he does all sorts of things like that.

Mr. Shibley: Well, I think what Mr. Deans wants is for you to make a matter of record of the evidence of this committee what, if anything, Mr. Colin Brown may have to do with matters political.

Mr. Smith: I don't know really. I think you would have to dog that out yourself. He is in to so many things. He brought the French-Canadians from Quebec City down to London for week ends, he

Mr. Shibley: Did you ever personally have any dealings with him referable to the support of any political party?

Mr. Smith: Oh yes, I said that he and I — I told you that he and I had gone out and tried to raise money in the provincial election, we had six or eight calls to make, or four or five or something.

Mr. Shibley: That's right, and for what party?

Mr. Smith: For the Conservative Party.

Mr. Shibley: Yes, all right. If I may then return, Mr. Smith, you have said what you want to say as to what you meant by "putting in a good word with D'Arcy". I want to refer you to your evidence respecting what I call no request for intercessions, and at page 746 - 1, I was asking you about your efforts with Mr. Cronyn, at the top of the page,

H - 2232 - 2

"Mr. Shibley: That's not what I asked you. I asked you whether you were in regular communication with Mr. Cronyn during the year 1972 with respect to this project.

" Mr. Smith: I kept Mr. Cronyn posted as to how it was going.

" Mr. Shibley: Yes, and did you also seek his advice from time to time?

" Mr. Smith: It's a general question. It's a difficult - I would not say I was in close contact with him about this from time to time, no.

" Mr. Shibley: Did you, from time to time, ask his advice as to how you should advance your own position respecting the obtaining of this contract?

" Mr. Smith: No. Actually Mr. Cronyn was very non-committal with me on it because of his association with the government.

" Mr. Shibley: That's not what I asked you, Mr. Smith. I asked you whether you ever sought his advice or assistance, not whether he gave it.

" Mr. Smith: Certainly it wasn't a paramount thing in my mind to.

" Mr. Shibley: I'm sorry, Mr. Smith.

" Mr. Smith: I said it was not a paramount -----

" Mr. Shibley: You're not being responsive, Mr. Smith, I didn't ask you whether it was paramount.

" Mr. Smith: No, but I think you are trying to take a different interpretation other than was there.

" Mr. Chairman: Mr. Smith, I think if you will let the committee make the interpretation and you just answer the question.

" Mr. Smith: Okay, ask the question again.

" Mr. Shibley: Did you ever seek Mr. Cronyn's advice during the year 1972 as to how you should advance ~~the~~ your own situation in obtaining the Hydro contract?

" Mr. Smith: Did I ever? Yes.

" Mr. Shibley: And did you do so on more than one occasion?

Sept. 10, 1973
11.45-11.50 a.m.
M.F.

H - 2232 - 3

" Mr. Smith: Yes.

" Mr. Shibley: And was the reason you sought his advice the fact that he was a person who might be able to influence Hydro in the selection of the developer?

" Mr. Smith: No."

Mr. Brownlie: Excuse me, the quote was "one reason".

Mr. Shibley: Yes - "and was one reason you sought" - thank you - "his advice the fact" and so on.

"Mr. Smith: No, I did not seek his influence as a person who could influence Hydro. No I did not.

"Mr. Shibley: Did you seek his advice as someone who might influence persons within the government?

" Mr. Smith: No, I did not.

" Mr. Shibley: Did he, in your thinking, fall into the same category as establishing contact with Mr. Dillon and Mr. White as per your memorandum to your staff?

" Mr. Smith: No."

Mr. Shibley: Than again at 747;

"Mr. Smith: I was sensitive to Mr. Cronyn's position and that is the reason for my answer"

Then later -

"Mr. Smith: I didn't think it would be right to ask a director of our company who also"

Tape H - 2233 follows

(Mr. Shibley)

~~as the person for me to see~~
~~and~~~~"I didn't think it would be appropriate to ask~~

of our Company, who also was working with the government, to do me a favour.

"Mr. Shibley: Did you think it right to inquire of him as to how you should go about having doors opened?

"Mr. Smith: No

"Mr. Shibley: And then, Mr. Smith, you had ...

"Mr. Smith: Doors opened? Leave it at that."

Q

And so on.

"Mr. Shibley: Did you consider that it was appropriate to approach him to ensure you had a better..."

Mr. Brownlie: Wait. Excuse me for interrupting.

That is significant, *what you just read.*

Mr. Shibley: All right. I will read it then.

"Mr. Shibley: Then, Mr. Smith, you had..."

"Mr. Smith: Doors opened? Leave it at that.

"Mr. Shibley: So that you might get a better hearing?

"Mr. Smith: That's right. Not favours, but a hearing.

~~...~~
"Mr. Shibley: You did consider that it was appropriate to approach him to ensure you got a better hearing. Is that correct?

"Mr. Smith: To approach Cronyn?

"Mr. Shibley: Yes.

"Mr. Smith: I don't think I approached Cronyn to ^Cintercede for me.

"Mr. Shibley: Did you approach Cronyn for advice as to who you should see or speak to or how you should go about ^Cinsuring you got a proper hearing?

"Mr. Smith: No, I do not think so."

Sept. 10/73
11:50-11:55 am
PLG

(Mr. Shibley)

Now Mr. Smith, when you gave those answers, you of course were aware of the letter of April 14.

Mr. Smith: No, I wasn't.

Mr. Shibley: You weren't...you told me earlier that it was one of two letters that you had set aside from the file when you were making up the file to be sent to me.

Mr. Smith: That's right.

Mr. Shibley: So you were aware of that letter.

Mr. Smith: No, I wasn't. I wasn't when I said that. I told you I had forgotten even the contents of this letter.

Mr. Shibley: Now I want to skip over to ~~758~~ 758.

Mr. Renwick: Mr. Chairman, perhaps you should continue on because this ties in with the meeting with Mr. Candy as well, which is referred to in part of the letter.

Mr. Shibley: Thank you, Mr. ~~Renwick~~ Renwick. At the bottom of 747-1:

"Mr. Shibley: And as of that date you were being reassured by Mr. Candy that it was still an open competition?

"Mr. Smith: Yes.

"Mr. Shibley: And as of that date you still had ambitions to succeed in obtaining this project for your own company?

"Mr. Smith: That's right

"Mr. Shibley: Yes. So you hadn't let up one bit in terms of the effort you were expending to obtain this contract.

"Mr. Smith: No.

"Mr. Shibley: No. In fact, you wrote him on the 11th of April saying:...

I am talking about a letter he wrote to Candy,

"The interest rate has gone up and this will affect the rental rate."

"Mr. Smith: That's right."

Then on page 758-1, about the middle of the page, Mr. Smith:

"Mr. Shibley: And I put it to you that the one person with whom you had close personal contact that you felt might be

Sept. 10/73
11:50-11:55 am
PLG

(Mr. Shibley)

able to do something about the circumstances surrounding the awarding of this contract to Mr. Moog was Mr. Cronyn?

"Mr. Smith: No, I did ~~not~~^{not} ask Mr. Cronyn to do anything on it.

"Mr. Shibley: That is not what I asked you. Is it not a fact that the one person known to you personally, that you felt was in a position to take some action respecting the matter in which Hydro was ~~not~~ allocating this matter in which Hydro was allocating this contract with Mr. Cronyn?

"Mr. Smith: I did not want Mr. Cronyn to take any action at any time."

Then over on the next page about half-way down:

"Mr. Smith: I don't think the purpose of my letter was to get Cronyn to do..."

And we were then talking about the July 14 letter that you had produced after that previous weekend.

"Mr. Shibley: Mr. Smith, I am sorry you are not being responsive. I am not now asking you for the purpose of your letter. You have made clear what ~~your~~ your evidence is and the committee will have to draw its own ~~conclusions~~ conclusions in that respect. I am asking you now, ^{Only} whether you consider ^{ed} that Mr. Cronyn was one person among any number, to make it clear, ^{who} ~~who~~ might be able to do something about the manner in which this contract was being let by Hydro.

"Mr. Smith: No, I didn't consider him to be a person who could do something about the contract.

"Mr. Shibley: Then why were you writing him in these terms?

"Mr. Smith: Because I was stating facts and I wanted his advice."

Now Mr. Smith, here ~~not~~ again, I put it to you that your letter of April 14 indicates that you did consider Cronyn to be a person who could do something for you respecting ~~his~~ this contract. You don't

H 2233-4

Sept. 10/73
11:50-11:55 am
PLG

(Mr. Shibley)

agree with that?

Mr. Smith: No, I think you twist things a bit.

Mr. Shibley: I see. I will read you from page 761-1, about a quarter of ~~the~~ ^{the} way down:

"Mr. Smith: And I asked him for his comments, and I would think

Tape H 2234 follows

Sept. 10/73
11.55 to 12.00
DT

(Mr. Shibley)

~~He said that if he did have comments, he would say: 'Go and see Gordon Walker or go back to see Mr. Gathercole.'~~ I was merely seeking advice, I was not seeking - I said 'May I have your ~~comments?~~ comments?'. I didn't say, 'I want you to do anything.' I just wanted -- he could say 'If you are so upset, go and see Gordon Walker, or go back and see Mr. Gathercole if you are so upset.'"

Now, stopping there, Mr. Smith, you made a point of saying, "I didn't say I want you to do anything," whereas, in your letter of --

Mr. Brownlie: Mr. Chairman, he is referring to the letter of July 14th, *which you are pointing to.*

Mr. Shibley: I understand that. I understand that but in the overall context of your evidence previously, Mr. Smith, your position was that you had never at any time asked Mr. Cronyn to do anything to advance your position in getting this contract.

Mr. Brownlie: I object to that, ~~that is~~ new not what he has said, --

Mr. Shibley: All right.

Mr. Brownlie: -- "to advance" it. "Intercede" is the word you have been putting prior, Mr. Shibley.

Mr. Shibley: All right, ~~was~~ was it -- your position in your testimony prior to this occasion that at a no time did you ask Mr. Cronyn to intercede for you?

Mr. Smith: That's what it said there, wasn't it?

Mr. Shibley: That's what you have said. You never said "I want you to do anything." That was what you ~~new~~ meant when you --

Mr. Smith: Yes.

Mr. Shibley: Is that right?

Mr. Smith: Yes.

Mr. Shibley: And yet in your letter of April 14, you were asking Mr. Cronyn to do something for you. You ~~are~~ asking him to put in a good word.

Mr. Smith: I guess you and I interpret things differently.

Mr. Shibley: I see. I guess we do.

Mr. Smith: Don't you ever ask somebody to put in a good word for you? I certainly didn't attach any significance to it.

Mr. Shibley: And then again at 774-1, just one line about three-quarters of the way down the page ---

Mr. Brownlie: 774?

Mr. Shibley: Dash one, yes.

Mr. Shibley: About three-quarters of the way down: "And I can give you ^a I have never asked Mr. Cronyn as I stated to intercede for me. Mr. Cronyn has never interceded for me. He did not reply to this letter and the only evidence I can give you that will verify that and so on." But the point I am ~~directing~~ directing your attention to is "I have never asked Mr. Cronyn as I stated to intercede for me." Again, do you think that evidence to be consistent with what you said in the April 14 letter?

Mr. Smith: I say it's consistent.

Mr. Shibley: And at page 775---

Mr. Smith: I would think if you asked somebody to intercede, you would ask somebody to get you an appointment or if you could meet them or something like that.

Mr. Shibley: At page 775-1, at the top of the page: Mr. Shibley: I'm wondering at the moment, what I am asking you about is, did you receive a communication from Mr. Cronyn, subsequent in point of time to July 14, 1972, when you wrote him the letter, exhibit 175, and prior to your interview with Mr. Manthorpe, during the latter part of November, 1972."

"Mr. Smith: I don't recall any - I could have. Mr. Cronyn is a director of our company."

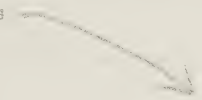
I am sorry, that relates to another topic. ^{wrongly noted there} Now, then, Mr. Smith, I want to next deal with you on the question of your evidence as to productions. At page 750 of the transcript, 750-2. I'm sorry, I am going to start at page 750-1, towards the bottom,

(Mr. Shibley)

And I remind you, Mr. Smith, that on June 27th, this was subsequent to the weekend of June 23 and June 24, during which time the July 14 letter surfaced. Is that correct?

Mr. Smith: I am sorry, I was losing you -- I lost you here, I am sorry.

Mr. Shibley: On the weekend of June 23 and June 24 is when the July 14 letter surfaced and it was



(H-2235 to follow)

ASeptember 10, 1973
12.00 noon - 12.05 p.m.
M H

(Mr. Shibley)

~~I'm sorry. On the weekend of June 23 and June 24, 1973, when July 14 letter surfaced and it was subsequently~~
produced to me through Mr. Brownlie

Mr. Smith: Right.

Mr. Shibley: And over that weekend you were very concerned to ferret out any remaining documents, were you not?

Mr. Smith: No.

Mr. Shibley: Did you not effect a review of your files?

Mr. Smith: No.

Mr. Shibley: Did Anne Shuttleworth or David Grant go through the files?

Mr. Smith: No.

Mr. Shibley: Did anyone ---

Mr. Smith: I just told you what happened that weekend.

Mr. Shibley: I see. But you did go into the question of whether all the documents in your possession had been produced to me ~~over~~ that weekend?

Mr. Smith: No, I did not.

Mr. Shibley: You didn't?

Mr. Smith: No. You mean that weekend?

Mr. Shibley: Yes.

Mr. Smith: No, I didn't.

Mr. Shibley: Well, you said you were concerned and went back - I'm talking about this is the first weekend ---

Mr. Smith: I know. I know.

Mr. Shibley: I call it the "London weekend" to differentiate it from the long weekend that I'll talk about later. ^{On} _^ The London weekend of June 23 and June 24, I want to know ---

Mr. Smith: What do you mean by the "London weekend"?

Mr. Shibley: I thought that this had been evolved from your office files in London that weekend. Was it not?

September 10, 1973
12.00 noon - 12.05 p.m.
M.R.

Mr. Smith: No.

Mr. Shibley: The July 14 letter?

Mr. Smith: No.

Mr. Shibley: Where did it come from?

Mr. Smith: It was in - oh, all right then, I guess

Monday I got it out, yes.

Mr. Shibley: But it was in London, wasn't it?

Mr. Smith: Oh, yes, okay. *I was in Toronto on the weekend.*

Mr. Shibley: All right.

Mr. Brownlie: He was in Toronto - he testified he was in Toronto on the weekend. That's the reason for the confusion.

I know what you are saying
Mr. Smith: ~~I was in Toronto that entire weekend.~~

I was in Toronto that entire weekend.

Mr. Shibley: Who went through the file then to dig out the document of July 14?

Mr. Smith: I believe I did on Monday, not on the weekend.

Mr. Shibley: In London?

Mr. Smith: Yes. I think so.

Mr. Shibley: So you were looking for documents on that occasion?

Mr. Smith: No, I was looking for a letter where I had mentioned Joe Barnicke. That's what I was looking for and that's ---

Mr. Shibley: Did you come across the April 14 letter on that occasion?

Mr. Smith: No, I didn't.

Mr. Shibley: Why not?

Mr. Smith: Because I was looking for the letter to Mr. Barnicke and it was in the "private and confidential" file and that's where I got it. I didn't - if I had come across the April 14 letter I would have given it to you and if I had realized you didn't have it, I would have given it to you. I could see no advantage in not giving it to you and if I had told Mr. ~~Brownlie~~ about it, he would have asked me to give it to you.

September 10, 1973
12.00 noon - 12.05 p.m.
A.R.

(Mr. Smith)

I ~~thought~~ it was a very — at the time I took it out I thought it was a very insignificant letter. I did not see it that weekend and I did not think about it.

Mr. Shibley: I refer you to your evidence at 750-1.

Have you got that in front of you?

Mr. Smith: Yes.

Mr. Shibley: At the bottom of the page:

"Mr. Shibley: Now then, Mr. Smith, were you during the latter part of June in communication - I'm sorry, were you at any time during the month of June in communication with Mr. Cronyn referable to this project?

"Mr. Smith: I don't recall, Mr. Shibley.

"Mr. Shibley: You don't recall? During the period February ~~2, 1972~~ ^{to the end of June} to the end of June inclusive, did you have any communication of any kind, written or oral, with Mr. Cronyn referable to this project? Other than the one to which Mr. Cronyn adverted and respecting which I read you his testimony?

Do you see that question?

Mr. Smith: Mm-mmh.

Mr. Shibley: "During the period February through to the end of June inclusive", which would cover April 14, 1972,

Mr. Smith: Mm-mmh.

Mr. Shibley: "Did you have any communications, of any kind, written or oral, with Mr. Cronyn referable to this project"?

"Mr. Smith: I would say no.

"Mr. Shibley: I beg~~u~~ your pardon?

"Mr. Smith: Excuse me. Did you say contact or written?

"Mr. Shibley: Any form of communication whatsoever.

"Mr. Smith: I can't confirm or deny. I see Mr. Cronyn at meetings all the time and I could have said "How's Hydro?" or something but not significant.

(Mr. Shibley)

"Mr. Shibley: Not significant.

"Mr. Smith: Not something that would stick
in my mind.

"Mr. Shibley: And when I say communication I mean
moving in either direction, from him to you as well as from
you to him.

"Mr. Smith: No."

Now, Mr. Smith, having regard for the fact that
you had been looking for the Barnicke letter on the preceeding
weekend, having regard for the fact that I was directing very
comprehensive and specific questioning to you on this day,
as I've just read to you,

H-2236 to follow

Sep. 10/73
12.05 to 12.10 pm
fvk

(Mr. Shibley)

~~directions are comprehensive and~~
to you on this day, April 14, 1972. Now is it that you
failed to produce to me the letter of April 14, 1972?

Mr. Smith: Because I didn't see it at that time.

Mr. Shibley: And you say you had no recollection of it?

Mr. Smith: I had no recollection of it. You did ask
me there. If you had asked me at any time, did I recall that
letter, there would be no advantage for me not to produce that letter.

Mr. Shibley: I want to refer you also to page 786-1
and about half-way down the page you'll see:

"Mr. Shibley: I have one closing question to put to
you, Mr. Smith, and that is - I don't want any inference taken
from the question - can we take it now that you have, in fact,
produced the whole of the documentation in the possession of Ellis-
Don, or any officer or employee of Ellis-Don?"

"Mr. Smith: Anything we haven't produced, we told you
we hadn't. The financial information we offered to you and you
haven't asked for it yet.

"Mr. Shibley: You are talking about the computer
takeoffs. Other ~~than~~ than that?"

"Mr. Smith: Yes. Everything else you have got. You
have got everything else."

Mr. Shibley: Do you remember being asked those
questions or making those answers?

Mr. Smith: Sure I do.

Mr. Shibley: And, in fact, I ~~have~~ hadn't been given
everything else, had I, Mr. Smith?

Mr. Smith: You had to the best of my knowledge, Mr.
Shibley.

Mr. Shibley: And while you gave that evidence was
Mrs. Shuttleworth present in this room?

Mr. Smith: Yes, I think she was.

Mr. Shibley: And was Mr. Smith present in this room?

Mr. Brownlie: You mean Mr. Grant.

Sep. 10/73
12.05 to 12.10 pm
fvk

Mr. Shibley: Mr. Grant?

Mr. Smith: Yes.

Mr. Shibley: And it was on the very next day, June 28, that the conversations took place when we rose at noon that day that Mr. Grant mentioned it to Mrs. Shuttleworth who mentioned it to you?

Mr. Smith: That's right.

Mr. Shibley: It was in his memory at least on June 28?

Mr. Smith: That's right.

Mr. Shibley: That there was another letter?

Mr. Smith: That's right.

Mr. Shibley: That had not been produced to me?

Mr. Smith: That's right.

Mr. Shibley: Mr. Smith, you've already indicated in some of the testimony that I read to you that you kept Mr. Cronyn posted as to your efforts. Is that correct?

Mr. Smith: Yes.

Mr. Shibley: It's already indicated that you had a meeting with Mr. Cronyn on June 3 ~~am~~ of this year to discuss the pending sittings of this committee. Is that right?

Mr. Smith: Yes.

Mr. Shibley: I put it to you, did you and Mr. Cronyn consider together that he was intent on not being disclosed as the person who had made a call to you?

Mr. Smith: No, sir, he didn't.

Mr. Shibley: Did you not say earlier that he was going to be upset by the fact that you had to make disclosure?

Mr. Smith: Yes, possibly I said ~~that~~. I think I told you that I didn't want to disclose his name.

Mr. Shibley: Yes. And did you and he also discuss the fact that he would take the position that he did not have any communications with anyone respecting the Hydro head office building until after the matter had become a public issue by the tabling of the Nixon questions on December 1st? Did you discuss that?

Mr. Smith: Give me that again, will you?

Sep. 10/73
12.05 to 12.10 pm
fvk

~~131~~ Mr. Shibley: That when you had your meeting with John Cronyn on June 3 of this year to deal with the evidence before this committee, did you discuss with him -

Mr. Smith: I didn't meet with him to deal with the evidence,

(Tape H-2237 follows)

Sept. 10, 1973
12.10-12.15 p.m.
M.F.

H - 2237 - 1

~~(Mr. Smith)~~

~~to discuss the evidence before the committee. I did not~~
~~discuss with him that~~

(Mr. Smith) I didn't meet with him to discuss the
evidence before this committee.

Mr. Shibley: You discussed the evidence before this
committee that you and he would be giving.

Mr. Smith: I discussed the fact that the article had
appeared in the paper, I didn't discuss anything about evidence
in the committee.

Mr. Shibley: Well did you not discuss with him that his
name was going to be mentioned?

Mr. Smith: No, I did not tell him then that his name
would be mentioned because I hadn't talked to you then.

Mr. Shibley: All right. Did you discuss with him the
prospects that his name would not be mentioned by you?

Mr. Smith: I don't recall whether I discussed whether
his name would not be mentioned or would be mentioned. I think
I probably said I would try and not mention his name.

Mr. Shibley: Yes; try to keep his name out of it.

Mr. Smith: Yes.

Mr. Shibley: And was part of that the withholding from me,
as committee counsel, of the letters of April 14 and July 14, 1972,
trying to keep John Cronyn's name out of it?

Mr. Smith: Possibly trying to save John Cronyn any
embarrassment, ^{and} maybe keep his name out of it. But --

Mr. Shibley: Yes. And was Mr. Cronyn aware that you
were making that effort on his behalf?

Mr. Smith: No.

Mr. Shibley: I see. Did Mr. Cronyn tell you that his
position would be that he never discussed the matter of the Hydro
head office with anyone until after Nixon had tabled his questions
in the House? -- December 1? Did he tell you that?

H - 2237 - 2

Mr. Smith: That his position would be that he had never discussed it with me?

Mr. Shibley: Discussed it with anyone?

Mr. Smith: No, we didn't even talk about that.

Mr. Shibley: You didn't talk about that?

Mr. Smith: No.

Mr. Shibley: Remember we were talking about the day of his call to you, and you said you thought it was January and he corrected you and said it was December. Do you remember that testimony?

Mr. Smith: Yes, I remember that.

Mr. Shibley: Yes. So you did discuss with Mr. Cronyn what would be his evidence and yours as to any communication — well that communication?

Mr. Smith: No, we did not discuss what ~~the~~ evidence was going to be.

Mr. Shibley: Mr. Smith, was it not agreed between you and MR. Cronyn that his position would be that he had no communication referable to the Hydro head office building until after December 1, 1972?

Mr. Smith: No, it wasn't discussed.

Mr. Shibley: I see, and I put it to you that that's the reason, because he wanted to take that position.

Mr. Smith: No, that was never discussed, Mr. Shibley. You're trying to make something out of it that didn't exist.

Mr. Shibley: I see. Well we will let the committee reach its conclusion, Mr. Smith. I must ask you the direct questions. But that is the reason, to be consistent with that position, that that is the reason these two letters were not produced in the first instance, isn't it?

Mr. Smith: No. Definitely not.

Mr. Shibley: Did you discuss with — you see, Mr. Smith, Mr. Manthorpe has said that when you called him during the week of November 22nd, you said you had received a call from someone

Sept. 10, 1973
12.10-12.15 p.m.
M.F.

H - 2237 - 3

(Mr. Shibley)

close to the Premier's office.

Mr. Smith: That is what Mr. Manthorpe said.

Mr. Shibley: Yes.

Mr. Smith: Right.

Mr. Shibley: Now, Mr. Cronyn, yourself, and Mrs.

Shuttleworth have all contradicted Mr. Manthorpe in that respect, by saying that you had not yet received a call from Mr. Cronyn at that point of time. Do you remember that?

Mr. Smith: I don't know. ~~Mr.~~ Mrs. Shuttleworth didn't know when Mr. Cronyn called me. I didn't name the date when Mr. Cronyn called me.

Mr. Shibley: When you came back the second time to give your evidence you said ^{you} gave evidence and so did she, to the effect "I wonder what John Cronyn would think if he knew I had already called Manthorpe". Remember that evidence?

Mr. Smith: Yes, I remember saying that.

Mr. Shibley: And that put Mr. Manthorpe's evidence in direct contradiction in terms of his being able to say that you told him someone close to the Premier's office had called you. Now what I want to know is whether it was part of an understanding that you had with John Cronyn that such evidence as would be given, including the documentary evidence, would be consistent only with communications taking place ~~between~~ *between*.

Tape H - 2238 follows

Sept. 10/73
12:15-12:20 pm
PLG

(Mr. Shibley)

~~such evidence as would be given, including the documentary evidence, would be consistent only with communications taking place after December 1, 1972.~~

Mr. Smith: I never had any agreement with John Cronyn about anything like that. Sorry.

Mr. Shibley: In any event, Mr. Smith, when you gave me all those answers respecting requests for intercessions...

Mr. Smith: Yes.

Mr. Shibley: [✓]You could not have believed that I was in possession of any such letter as dated April 14, 1972, exhibit 232.

Mr. Brownlie: Why not?

Mr. Smith: Well, I don't consider that is asking for an intercession. I am sorry. I would still give you the same

answer. I am not trying to fool you. I don't even know Darcy ^{and if} somebody says put in a good word, ^(all to put in a good word and) I have got people asking

I say, "If you are dealing with them, give them a fair break?" That's a good word.

Mr. Shibley: Well, Mr. Smith, may I ask you this; Having had it brought home to you by Mr. Grant and Mrs. Shuttleworth, on June 28 that there was a letter dated April 14, not yet produced, why did you, ~~for~~ any of you, including Mrs. Shuttleworth, ~~for~~ Mr. Grant ~~for~~ Mr. Cronyn to whom you showed that letter on July 1, why did not one of you voluntarily come forward and produce that letter to me?

Mr. ~~Tom~~ Solway: Mr. Chairman, ^{he} ~~he~~ can only answer for himself.

Mr. Shibley: Thank you. I would be glad to hear Mr. Cronyn answer for himself. Why did you not come forward with that letter, once you ~~was~~ were aware that it was in contradiction?

Mr. Smith: I told you that last Friday.

Mr. Shibley: Well tell us. Tell the committee. It is not on ~~the~~ the record.

Mr. Smith: I was worried about my credibility. I

Sept. 10/73
12:15-12:20 pm
PLG

(Mr. Smith)

was really upset that weekend.

Mr. Shibley: Were you also worried about Mr. Cronyn's credibility?

Mr. Smith: No, I wasn't concerned about Mr. Cronyn's at all. I was worried about my own.

Mr. Shibley: Were you concerned about his reputation?

Mr. Smith: No, I was not. I was worried about my own credibility and that is the -- to me that looked very bad. I was very upset at that.

Mr. Shibley: It had nothing to do with withholding it to ensure...

Mr. Smith: No. ^{It} ~~that~~ was my credibility that really upset me.

Mr. Shibley: Well, I realize you were concerned about your own, but I also want to know whether you were concerned about the credibility of Mr. Cronyn.

Mr. Smith: No, I was not concerned about that at the time.

Mr. Shibley: Well, were you subsequently concerned about it?

Mr. Smith: No, I wasn't. I had not -- I don't think I ^{ever} talked to Mr. Cronyn twice since these hearings started.

Mr. Shibley: Well, when he agreed with you on July 1 that the letter should not be produced, was his position at all the subject of ~~a~~ comment between you?

Mr. Smith: No. No it was my credibility I was concerned about. I was upset and I said, "I don't gain anything by it. I could have given him that ~~the~~ darn thing."

Mr. Shibley: Mr. Smith, that is the point.

Mr. Smith: ~~That's right~~ There is no advantage for me to hold that thing, and that is what you...

Mr. Shibley: Exactly.

Mr. Smith: You are attacking my credibility on it.

Mr. Shibley: ~~That's right~~

Sept. 10/73
12:15-12:20 pm
PLG

Mr. Smith: You are darn right you are.

Mr. Shibley: Well, Mr. Smith.

Mr. Smith: If I had something to gain, if it was a thing that was ~~am~~ damaging, fine

Mr. Shibley: Mr. Smith, that is the whole point. There was no reason for you to withhold those letters except to shelter John Cronyn.

Mr. Smith: No, not shelter

Mr. Shibley: Well, what is your expression?

Mr. Smith: I didn't think they were that significant and I didn't want to embarrass John Cronyn or ~~Colin Brown~~ ^{Colin Brown} or what have you.

Mr. Shibley: Yes. The whole purpose of your not making disclosure of these documents at the outset was to prevent embarrassment to John Cronyn, Colin Brown and these other people.

Mr. Smith: Yes

Mr. Shibley: It had nothing to do with protecting your personal position

Mr. Smith: No. No. I had nothing to gain

Mr. Shibley: And similarly with the answers you gave in connection with not ever asking John Cronyn to intercede for you. You were trying to ~~protect~~

Tape H 2239 follows

Sept. 10/73
12:20-12:25 am
PLG

(Mr. Shibley)

~~and similarly with the answers you gave in connection with not~~
~~over asking John Cronyn to interfere for you.~~ You were trying
to protect John Cronyn's reputation, weren't you?

Mr. Smith: I wouldn't say protect his reputation.
I didn't want to embarrass him.

Mr. ~~Smith~~ Shibley: Doesn't that amount to the same
thing?

Mr. Smith: I am not sure if it does. I would say
I didn't want to embarrass him. I don't think it was his
reputation that was at fault at all. I didn't want to embarrass
him. I mentioned that to you the first time I met you, I think.

Mr. ~~Smith~~ Shibley: About Colin Brown?

Mr. Smith: No, about John Cronyn. That I didn't
want to embarrass him, and I said, ^{will} ~~will~~ I have to divulge
his name?" and you said, "Yes".

Mr. Shibley: Oh yes, that's right.

Mr. Smith: And I said I didn't want to embarrass
him.

Mr. Shibley: Yes I realize that. My point, however,
is that part of that effort not to embarrass him included the
withholding of these letters.

Mr. Smith: That could be part of it, sure.

Mr. Shibley: And whether or not he joined you in
that effort prior to July 1, ~~on~~ July 1 he ~~at~~ at least, agreed with
you that it should be withheld.

Mr. Smith: He didn't agree with me that it should be —
~~but~~ I told him I was very upset and I said, this will really attack
my credibility, and I had been honest down there, so I said I was
not going to turn it in. It was my credibility that I was concerned
about.

Mr. Chairman: Now Mr. Smith, on your oath, the word
"The whole truth" is included in that oath. You say you have been
honest down here. ~~the~~ the whole truth.

Mr. Smith: You got the whole truth Mr. MacBeth. I
haven't lied to you once. I told Mr. Shibley if he was concerned

Sept. 10/73
12:20-12:25 am
PLG

(Mr. Smith)

about the threat as put in the paper, I would take a polygraph test on anything that I have testified.

Mr. Shibley: Yes, you did.

~~Mr. Smith:~~ Well all right.

Mr. Chairman: Well now, you have referred to this letter earlier I think as insignificant. Do you recall that?

Mr. Smith: I am going back to how things were then, eh? You know, what you consider ~~insignificant~~ insignificant you wouldn't now. Nobody knew this thing ~~would~~ -----

Mr. Chairman: Do you still consider it insignificant?

Mr. Smith: No, I gave it to you. I made a mistake by not giving it to you. I won't deny that. That wasn't very bright on my part.

Mr. Chairman: That is the whole truth. You know, it was your complaint that brought about this ~~an~~ investigation and I have been very much upset this morning by the fact that by this letter not coming forward earlier, it looks as if we may have to continue on longer. Don't you think you deserve this committee the full cooperation?

Mr. Smith: I have given the committee my full cooperation.

Mr. Chairman: That's your opinion. Now, do you think we ---

Mr. Smith: Where haven't I?

Mr. Chairman: ~~Where haven't I?~~ are so naive that we could think that at any time you thought this letter was ~~insignificant~~ insignificant?

Mr. Smith: I thought that letter was insignificant. You tell me what it says in it.

Mr. ~~Chairman~~ Chairman: Isn't it the very foundation of what we are trying to investigate?

Mr. Smith: I don't think so.

Mr. Chairman: All right. Thank you.

Mr. Shibley: Mr. Smith, were you present when Mr. Cronyn gave his evidence?

Mr. Smith: No I was not.

Mr. Shibley: On either June 28 or July 3rd?

Sept. 10/73
12:20-12:25 am
PLG

Mr. Smith: What was June 28?

Mr. Shibley: June 28 was the Thursday, and then he ~~xx~~ gave his evidence on the following ~~-----~~

Mr. Brownlie: Tuesday.

Mr. Shibley:---Tuesday, and I have a recollection of your saying to me, as a matter of fact, during a recess, you felt it only right to sit in while he was giving his evidence. I might also ~~Mr. Smith~~ remind you that Mrs. Shuttleworth and Mr. Grant also testified that day.

Mr. Smith: I was here when they testified and I wasn't sure whether we left or came back that afternoon. Wasn't that the day that Mr. Cronyn asked for a stay so he could read transcript?

Mr. Shibley: What I want to know is whether you were here on those two days, because on the 28th at page 836-2 this is what the Chairman said to Mr. Cronyn:

"Mr. Chairman: I am going to take it that the motion to adjourn has been carried."

This is after Mr. Eberle took issue with the fact he ~~was~~

Mr. Smith: Yes, I was here then. I was here ~~xxx~~ ^{and heard} that.

Mr. Shibley: And do ~~xx~~ you remember that Mr. Eberle said Mr. Cronyn hadn't had an opportunity to prepare and investigate what documents he might have or know about etc. You remember that?

Mr. Smith: Sure.

Mr. Shibley: And the Chairman said,

"Mr. Chairman: I am going to take it that the motion to adjourn has been carried. Mr. Cronyn, you know have notice to bring with you not only any documents or any items that ~~xx~~ have already been produced, but to bring anything else with you that may be material in the way of documents or evidence and to be here yourself next Tuesday morning at 10 o'clock. I am going to take it that the motion for adjournment has been carried." You heard that?

Mr. Smith: Yes.

Mr. Shibley: And then on July 2nd, the following Tuesday

~~Transcript of the~~

Sept. 10/73
12:25-12:30 pm
PLG

~~Mr. Smith: Yes, but I am not sure, Mr. Shibley, that~~

~~has been carried out for the last 10 years.~~

~~Mr. Smith: Yes, but I am not sure, Mr. Shibley, that~~

Mr. Shibley: And then on July 3rd, the following ~~was~~ Tuesday, at page 857-1, first of all, I should tell you, on that day Mrs. Shuttleworth-- I am talking about July 3rd, both --no, you yourself testified on July 3rd, so you were here that day.

Mr. Smith: Yes, but I am not sure, Mr. Shibley, that I came in and testified and I am not sure whether I was here for the whole day or just the.

Mr. Shibley: Well, Mr. Cronyn went on first and then you came right after him

Mr. Smith: I didn't come on until about 5:30 at night and -- Just a minute. ~~Where~~^{was} I here all day? ~~We were here all day, I~~
couldn't remember

Mr. Shibley: Yes, you were here all day, and at the beginning of the day did you hear me ask Mr. Cronyn this question, at Page 837-3:

"Mr. Shibley: Mr. Cronyn, following your review of the evidence and your in-depth examination of your files, did you come up with any documents which are in any way relevant to the issues that you say you now understand?

"Mr. Cronyn: No I did not, sir

"Mr. Shibley: None at all.

"Mr. Cronyn: Not at all,?"

Did you hear Mr. Cronyn give that evidence:

Mr. Smith: I think I probably did

Mr. Shibley: And this is two days after you have just shown him the letter of April 14 on July 1 up at the cottage.

Mr. Smith: Yes

Mr. Shibley: So that you knew that that was an incorrect answer. Didn't you?

Mr. Smith: Yes, sure.

Mr. Shibley: And you ~~was~~ said nothing about it.

Mr. Smith: No, I didn't say anything about it. You didn't ask me the question.

Mr. Shibley: Do you think it is a proper thing to sit there while someone else gives incorrect testimony, without bringing it to the attention of the ~~committee~~ committee, when you yourself have been asked previously to produce all documentation that is ~~and~~ relevant?

Mr. Smith: I don't know if I should get up and contradict Mr. Cronyn. I don't know.

Mr. Shibley: I see. And you didn't consider you had any obligations to this committee to come forward with that letter, notwithstanding it was the subject of conversation between you and Cronyn just two days earlier?

Mr. Smith: I didn't consider it was that significant a letter and I thought it would just prolong the hearing another month or so.

Mr. Chairman: ~~How~~ How could it prolong the hearing another month or so if it wasn't significant?

Mr. Smith: Because they would probably ask everybody questions on the whole thing.

Mr. Chairman: Don't you think it would have been better to come out then than now?

Mr. Smith: It ~~was~~ would have been better, Mr. MacBeth, I am not denying that. I didn't think it would make any difference in the outcome.

Mr. Chairman: I am not so sure it will, but that is up to the committee to decide.

Mr. Smith: I agree. I was wrong, Mr. MacBeth. I am not denying that.

Mr. Shibley: Mr. Chairman, I think it might be propitious to adjourn for lunch and come back earlier than usual, say at 2:00. I want to review my notes a little more closely. I don't know that I have anything further to pursue with this witness on this document

Mr. Chairman: We are adjourned then until 1:45 p.m.

Tape H 2241 to follow

The committee adjourned at 12.29 o'clock, p.m.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice
G.D. Finlayson, QC

D.J. Smith counsel:

J.D. Brownlie

J.B. Cronyn counsel:

H.H. Solway, QC

President, Ellis-Don Ltd.:

D.J. Smith

List of exhibits introduced during this sitting appears on the next page.

INDEX TO EXHIBITS

Exhibit	Page	Description
232	2223 - 1	Letter - April 14, 1972 - from D. J. Smith, Ellis-Don, Limited, to J. B. Cronyn, John Labatt Ltd., re Hydro Ontario Head Office Building.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Monday, September 10, 1973

Afternoon session

2241-2279

Sept. 10/73
1.55 to 2.00 pm
DT

The committee resumed at 1:55 o'clock, p.m., in the members' board room.

Mr. Chairman: Ladies and gentlemen, I ~~am~~^{was} just suggesting to Mr. Shibley I want to move ~~around~~^{along}, and he says he's ready to go and that I was the one that was holding him up. ^{So} let's get moving. We are back in session ~~and~~, Mr. Shibley.

Mr. Shibley: Mr. Smith, there's just a few more references to the evidence that I would like to read to you and ask for your comments on, ~~the~~^{the} first is in 752-1.

Mr. Smith: What ~~day~~^{date} is that?

Mr. Shibley: That's - sorry - it's June 27 in the morning, 11:35, towards the bottom of the page.

"Mr. Shibley: And when did you first review this letter in connection with these hearings?" I am talking about the July 14th letter.

"Mr. Smith: I think probably before the hearings started."

"Mr. Shibley: Yes. Did you not consider the document to be among documents relevant to the issues upon this hearing?"

"Mr. Smith: No, I didn't think they were things that had been told you or told anybody else before."

"Mr. Shibley: That's not what I asked you."

"Mr. Smith: No, I didn't think it was quite relevant."

"Mr. Shibley: You didn't think it was that relevant?"

"Mr. Smith: No."

"Mr. Shibley: So for that reason and that reason~~ly~~ only, it was not produced."

"Mr. Smith: I did not think it would add anything."

Mr. Shibley: And then on page 752-3, about a quarter of the way down:

"Mr. Shibley: So that in fact you were in continuing communication with Mr. Cronyn respecting your progress on this project?"

"Mr. Smith: I kept him posted."

And then at page 766-2, about the middle of the page:

"Mr. Smith: I believe that Mr. McAuliffe has got -- he has run the two comments together, and I have been honest with you

Sept. 10/73
1.55 to 2.00 pm
DT

(Mr. Shibley)

and I told you the other day that I could not figure out where the discrepancy was and I went up and told you that I sat back and I was trying to figure out where he was wrong, and I went up and told you and I now think I ~~know~~ know the mistake he has made. That's my recollection.*

"Mr. Shibley: And then you went back and dug out the letter?"

"Mr. Smith: That's right."

"Mr. Shibley: Is that how it happened?"

"Mr. Smith: That's right. I went back and I went through all my files."

Mr. Shibley: Then on page ~~2~~ you went back on the weekend of June 23-24 and looked through all your files. That's what you were telling me then.

Mr. Smith: Yes.

Mr. Shibley: Then at page 767-2 *at the top*:

"Mr. Smith: Now I talked - and I assure you, Mr. Shibley that this is the kind of thing that has caused me quite a bit of concern I went and told you the other day that I think he has got two things ~~was~~ confused and it came to me that it is Barnicke's remarks. As I say, I worried all weekend, and I worried Friday, too, trying to recall where he could have got that. In all honesty, I do not recall saying it to him on the phone or what I said that night."

Mr. Shibley: And then you go ~~on~~ on, on the top of 768-1:

"Mr. Smith: That is right. She said I said it. I didn't recall because as I say, there is a worry that you could lose business and quite possibly our company could lose business. I had to consider that before I spoke to these fellows. I had been told you can put it any way you want to, be quiet - I don't think shut up is the proper word ^{for} you could hurt your company."

"Mr. Shibley: Yes." "

Now, I take from all those excerpts that before that weekend of June 23-24, you ~~a~~ developed a concern to sort this thing out in your mind and went back into your files and very carefully reviewed

Sept. 10/73
1.55 to 2.00 pm
DT

(Mr. Shibley)

the file, is that right?

Mr. Smith: No.

Mr. Shibley: It isn't right?

Mr. Smith: No, I didn't go back on the weekend and review the files.

Mr. Shibley: Well, on Monday, did you review it?
On that weekend of June 23-24?

Mr. Smith: I could have reviewed the files on Monday, yes. I didn't look at anything on the weekend.

Mr. Shibley: All right, on Monday then. So then, you were considering very incisively what further documents might shed light on the confusion, as you have described it. Isn't that so?

Mr. Smith: Yes.

Mr. Shibley: Did you, on that occasion, come across your copy of the April 14 letter?

Mr. Smith: No.

Mr. Shibley: You didn't come across it?

Mr. Smith: No, I told you that before. I did not.
I wouldn't have told you if I had *of* have.

~~Mr. Shibley: Well, what I am wondering about, Mr. Smith, is the context of ---~~

(H-2242 to follow)

September 10, 1973
2.00 - 2.05 p.m.
M.R.

(Mr. Smith)

~~... I would have told you if I had.~~

Mr. Shibley: Well, what I'm wondering about, Mr. Smith, in the context of reviewing your files ---

Mr. Smith: I don't have that many files. My file was the same as yours. My file that I brought in here is the same as yours.

Mr. Shibley: I see. My having asked about you about all other documents and having asked you about asking people for intercessions, asking particularly Mr. Cronyn if he would intercede ---

Mr. Smith: I didn't ask him to intercede.

Mr. Shibley: I say to you, ~~the~~ having regard for the questions that I had been putting to you about your requests of Cronyn to intercede for you ---

Mr. Smith: Mm-mmh.

Mr. Shibley: --- would this letter of April 14 not have come and, so to speak, hit you in the face in that respect?

Mr. Smith: No, because I didn't see it on that weekend.

Mr. Shibley: I see. Where was it that you didn't see it?

Mr. Smith: It was in the Hydro file.

Mr. Shibley: All right. Did you see it on Monday?

Mr. Smith: No. I didn't see it, Mr. Shibley. Do you want to try again or ---

Mr. Shibley: No.

Mr. Smith: I didn't see it. I had the photo copy file and actually when I say went through files, we went through transcripts or, you know.

Mr. Smith: Over ~~the~~ the recess, the luncheon recess, Mr. Brownlie asked me to take you back to the sequence of events of ~~the~~ June 29 ---

September 10, 1973
2.00 - 2.05 p.m.
M.R.

Mr. Brownlie: 28th.

Mr. Shibley: 28th, thank you. And also of the following Tuesday, July 3. And I take it that on June 28 that notwithstanding that Mrs. Shuttleworth had spoken to you about an additional document, that Mr. Grant said had not been produced to me, you had not then made any mention of that fact to Mr. Brownlie on the 28th?

Mr. Smith: 28th - I don't think I mentioned it to Mr. Brownlie, no.

Mr. Shibley: No.

Mr. Smith: I hadn't - they said there was another ~~xxx~~ document and I said I wanted to see it, and when I left Brownlie I hadn't seen it. I went back to London to see it.

Mr. Shibley: Now I'm asking you this question on Mr. Brownlie's request, Mr. Smith. When did you first tell Mr. Brownlie about that letter?

Mr. Smith: I think it was on the Tuesday.

Mr. Shibley: Yes.

Mr. Smith: I think it was on the Tuesday, Mr. Shibley.

Mr. Shibley: On July 3?

Mr. Smith: Yes.

Mr. Shibley: Now, what caused you to tell Mr. Brownlie about the letter on July 3?

Mr. Smith: Because I had not seen him since the previous week and I had seen the document on either Thursday night or Friday morning and then I reported it to him on the next time I saw him.

Mr. Shibley: Did somebody approach you in this committee room on July 3 and make an inquiry of you as to whether there was an additional letter?

Mr. Smith: On July 3?

Mr. Shibley: Yes.

Mr. Smith: Yes.

Mr. Shibley: And who was that?

September 10, 1973
2.00 - 2.05 p.m.
M.R.

Mr. Smith: It was a Globe and Mail reporter.

Mr. Shibley: Yes. Could you describe him - do you know who it was?

Mr. Smith: No, I don't.

Mr. Shibley: Could you describe him to me, please?

Mr. Smith: No. He was a young fellow and I might know the name if I heard it.

The Globe and Mail probably know who it is because they probably had it all set up.

Mr. Shibley: Was he a tall, slim fellow?

Mr. Smith: I wouldn't have said a tall, slim fellow. I would have said a rather short, youngish fellow.

Mr. Brownlie: I would have said a tall, slim fellow.

Mr. Shibley: Yes.

Smith: ~~Brownlie~~ Would you?

Mr. ~~Smith~~ He mentioned his name but ~~didn't~~ —

Mr. Brownlie: I didn't get his name either.
~~get his name~~

Mr. Shibley: Was his name Mr. Carriere?
by any chance?

Mr. Smith: Carriere doesn't ring a bell to me.
No. No, it doesn't ring a bell.

Mr. Shibley: I'm not saying it was. I just wondered ...

Mr. Smith: No, I don't think I would ...

Mr. Shibley: It was some reporter —

Mr. Deans: Would you ask him if it was Norm Webster?

Mr. Shibley: Was it Norm Webster?

~~Mr. Smith:~~

~~Mr. Shibley:~~ He doesn't know?

~~Mr. Smith:~~ No, it doesn't —

Mr. Smith: He was a young fellow.

Mr. Shibley: Did he have a moustache?

Mr. Smith: I would say no.

Mr. Shibley: In any event, somebody came up and asked you the question and you knew he was from the Globe. He identified

H-2242 - 4

September 10, 1973
2.00 - 2.05 p.m.
M.R.

Mr. Smith: He just came up and introduced
himself from the Globe and he said "Did you ~~write a letter~~"

H-2243 to follow

H - 2243 - 1

(Mr. Smith)

~~and introduced himself from the Probe and he said "did you~~
write a letter around the first part of April to John Cronyn
with a reference to Colin ^{Brown} ~~Grant~~ in it?" And I said, "No comment".

Mr. Shibley: In any event this reporter was neither
Mr. Manthorpe nor Mr. McAuliffe.

Mr. Smith: No, I know it wasn't ^{them} ~~t~~. I don't know Mr.
Carrier so -----

Mr. Shibley: So that he asked you that and you said
"No comment." Was it before that or after that that you spoke
to Mr. Brownlie?

Mr. Smith: Oh, before that, I'd say. I would say I told
Mr. Brownlie probably when I first met him on the week end, or
after the week end.

Mr. Shibley: All right. And when Mr. McAuliffe was in
London interviewing you, you had instructed that your files be made
available to him, had you not?

Mr. Smith: Well, I don't know whether you can say
"instructed." We certainly let him see the files, now whether we --

Mr. Shibley: Yes. Were the two letters of April 14
and July 14, 1972, in the files that Mr. McAuliffe was permitted
to see?

Mr. Smith: Yes. I didn't see what files he saw, but I
assume they were. I didn't see him looking at the files, I wasn't
there when he looked at the files but I assume that they were ^{in them}

Mr. Shibley: You don't know whether he saw the letters
or not?

Mr. Smith: No, I don't. I don't know what he saw. I
wasn't there when he saw anything and I didn't see him looking
at anything that he saw.

Mr. Shibley: All right. Now then coming back to the
letter itself, exhibit 232, I notice that it does not reference
anything. It doesn't say ~~the~~ "re Hydro" and it starts off:

H - 2243 - 2

(Mr.Shibley)

"I have given further information to Mr. Ken Candy" and it reads like an on-going communication, Mr. Smith, if you follow me, that it didn't need explanation to Mr. Cronyn what you were writing to him about, that you had already had some previous communication with him. Had you?

Mr. Smith: I am not sure just what you mean. I certainly told Mr. Cronyn we were bidding on the Hydro contract.

Mr. Shibley: Yes, you had told him that when?

Mr. Smith: Oh, I don't know, ^{I mean} he was quite aware of it when we were bidding on it. It is ~~the~~ only natural you are going to tell him if you are bidding on it and he is a director, you know.

Mr. Shibley: I am not suggesting otherwise, Mr. Smith. I just put it to you that it appears that when you say "I have given further information to Mr. Candy" that it indicates that you had told him previously what you had provided to Hydro and what you were doing in connection with Hydro.

Mr. Smith: No, further information was further information to the tender.

Mr. Shibley: I see.

Mr. Smith: And he knew ~~he~~ had tendered and "further information" meant that Mr. Candy had asked for further information to our submission.

Mr. Shibley: I see. Now, Mr. Smith, at the bottom of this same letter - Mr. Henderson has just arrived in time for me to ask you, you say "I will also work on it myself" - do you see those words??

Mr. Smith: Oh yes.

Mr. Shibley: What did you mean by that ?

Mr. Smith: I would keep doing my best trying to find out what is going on and see if I can win the contract.

Sept. 10, 1973
2.05-2.10 p.m.-
M.F.

H - 2243 - 3

Mr. Shibley: Well, did that include communication with as many political figures as were friendly to you?

Mr. Smith: No, I had pretty well given up on trying to find out that way. I ~~don't know, but I'd~~ ~~don't know, but I'd~~

Mr. Shibley: Well, in the context of this postscript, Mr. Smith, wherein Mr. Brown and ~~Mr. M. K. Thompson~~ ~~and~~ ~~you say "I will also work on"~~ ~~are~~

Tape H - 2244 follows

Sep. 10/73
2.10 to 2.15 pm
fvk

(Mr. Shibley)

Mr. McKeough mentioned ~~and~~ you say: "I will also work on it myself."

Mr. Smith: We put in proposals, Mr. Shibley, at least two or three a week, and I keep in touch with the hospital boards or the architects myself to find out what is going on, and I would call that working on it to ascertain where the tender is at the present time or ~~whether~~ ^{if} it was being done on the contract. I keep track of all the proposals we put in.

Mr. Shibley: Did you communicate with any other persons having a position with government, or having any connection with government, relative to the Hydro project?

Mr. Smith: Just what I told you last Friday. Do you call that a communication?

Mr. Shibley: This is a judgement call, Mr. Chairman, and I'm going to call it as not really being probative.

Mr. Smith: I beg your pardon?

Mr. Shibley: No, I'm not going to ask you about that,

Mr. Smith.

Mr. Smith: That was the only thing I thought maybe -

Mr. Shibley: Other than that?

Mr. Smith: No.

Mr. Shibley: Mr. Smith, finally, I want to ask you whether you, or anyone else under your direction, or acting as your agent, or any employee, or servant or office of Ellis-Don, or any trustees, directly or indirectly, or however it may be, is in possession of any further document referable to the Ontario head office building?

Mr. Smith: Just what I told you I had ~~on~~ some calculations on the janitor. I told you I had ¹ these last Friday and I brought them down. I don't want to get nailed on this. This is the last thing that I know of.

Mr. Shibley: Have any ~~more~~ documents which relate to the head office building ever been destroyed?

Mr. Smith: No.

Mr. Shibley: So, can we take it now that we have all documents which now, or ever have been, in the possession of Ellis-Don or any ~~other~~ of its agents, referable to the Hydro head office building?

Mr. Smith: Yes, you have everything except these.

Mr. Genest: ^{Could} ~~do~~ we have those, Mr. Chairman? I'd like those janitor's calculations.

Mr. Brownlie: It wasn't the janitor's calculations, ~~we~~ believe me, it was one of their senior officials. The janitor didn't do it.

Mr. Chairman: Are you serious, Mr. Genest?

Mr. Genest: Yes, I am. We've had some other calculations from which ~~we~~ inferences may be drawn. ~~Everybody~~ I'd like to have those. Everybody else has produced the whole file.

Mr. Chairman: These might be in Hydro's favour.

Mr. Smith: I think in answer to Mr. Genest, you have the results of these figures. They were just used in our calculations.

Mr. Shibley: You came up with \$1.23 for maintenance costs in your proposal.

Mr. Genest: Yes, and you've been quoting that as Y&R's figure.

Mr. Shibley: I just say that I don't know what difference it makes but if you want to have them produced we will.

Mr. Smith: I don't think they're significant. I don't know, I'm not going to make any judgement any more.

Mr. Chairman: Mr. Genest has asked for them. Would you please show them to Mr. Genest and he can be the one that decides whether he would like them in or not.

Mr. Shibley: I'd like them produced to us, Mr. Chairman, if you would.

Mr. Smith: Wouldn't they go to Mr. Shibley?

Mr. Shibley: Yes. There is one other thing, Mr. Smith.

Mr. Genest: Perhaps, before we go too far. If they

Sep. 10/73
2.10 to 2.15 pm
fvk

(Mr. Genest)

could be turned over to Mr. Shibley and I could have an opportunity to examine them, we don't need to make them an exhibit now, but, subject to my right, to ask that they be made an exhibit I'd like them produced.

Mr. Shibley: Fine, thank you. Mr. Smith, do maintain a diary, or a calendar?

Mr. Smith: Oh, sure.

Mr. Shibley: Would you also produce that to me?

Mr. Smith: Will I? ~~It's not~~

Mr. Shibley: Yes.

Mr. Smith: Yes, I've got mine for the last six years.

Mr. Shibley: I'd like it for the years 1971, 1972 and 1973. I want to ask you about ~~the~~ government contracts.

(Tape H-2245 follows)

(Mr. Shibley)

~~I want to ask you about government projects.~~ Are you engaged in the construction of any government facility at the present time?

Mr. Smith: Certainly.

Mr. Shibley: In particular, I know that this may be an indirect government thing, but are you engaged upon the construction of the Ryerson Institute extension?

Mr. Smith: You call that a government project?

Mr. Shibley: I don't know, but I ~~would~~ *presume*

Mr. Smith: I don't call that one.

Mr. Shibley: Well, are you engaged in constructing that?

Mr. Smith: Yes. Yes, we are.

Mr. Shibley: That was a \$20-million project?

Mr. Smith: No, that was two \$10-million contracts.

Mr. Shibley: Two-phased?

Mr. Smith: ~~Yes~~ *Yes*.

Mr. Shibley: That correct?

Mr. Smith: And they were both tendered.

Mr. Shibley: Yes. And you are currently on phase 2?

Mr. Smith: Yes.

Mr. Shibley: At the time you were successful with respect to obtaining that contract, was Mr. Clare Westcott on the Board of Directors of Ryerson?

Mr. Smith: I don't know.

Mr. Shibley: You don't know that?

Mr. Smith: I told you last Friday I don't know who Clare Westcott is. I have never heard of him.

Mr. Shibley: I see. Have you ever discussed the Hydro head office building with Clare Westcott?

Mr. Smith: How ~~can~~ *could* I discuss it with him if I don't know him?

Mr. Shibley: Well I just want your position of record, Mr. Smith.

Sep. 10/73
2.15-2.20 pm
V.H.

Mr. Smith: Well my position is that I have never -- I don't know Clare Westcott and I never discussed it with anybody anonymously. We ~~had a~~ way down the line ~~min. 12~~

Mr. Shibley: In any event, he never called you with respect to anything connected with the Hydro head office building?

Mr. Smith: No. No. No.

Mr. Shibley: Is that right?

Mr. Smith: Yes, that's right.

Mr. Shibley: I have no further questions.

Mr. Chairman: Mr. Smith, have you received any what you would refer to as government contracts since the first of May of this year?

Mr. Smith: Yes. What I would refer to as a direct contract with the government, and we have one up in North Bay. We have a contract; we haven't signed it yet, *but it's there*.

Mr. Chairman: Building a building is it?

Mr. Smith: It's for building an old peoples' home, I believe, Mr. MacBeth.

Mr. Chairman: ~~Y&K~~ Thank you. Mr. Deans.

Mr. Deans: Mr. Chairman, I would like to ask Mr. Smith in ~~regard~~ regard to Mr. Brown for a moment. You've stated, Mr. Smith, I believe, that Mr. Brown was a long time friend with whom you lunched frequently. I think you referenced it ~~like~~ ^{to} something like a couple of times a week if I am not mistaken. Was I right in that?

Mr. Smith: Oh ~~yes~~, that's right.

Mr. Deans: Good. Would you agree with me that Mr. Brown is very active in the field of influencing public opinion?

Mr. Smith: No I wouldn't agree. I don't know if he influences it or not. *He tends to.*

Mr. Deans: Well, would you agree with me that he is active in ~~trying~~ ^{to} to influence public opinion?

Mr. Smith: Yes, I would say so.

Mr. Deans: And that Mr. Brown is a strong supporter

(Mr. Deans)

of the Conservative ^Party or at least has been in the recent past.

Mr. Smith: I am not aware of that.

Mr. Deans: You are not aware of that?

Mr. Smith: No.

Mr. Deans: And yet you helped him raise money for the Conservative ^Party?

Mr. Smith: I just made a couple of calls.

Mr. Deans: But you just consider ^d that normal business activity, did you?

Mr. Smith: Which?

Mr. Deans: The raising of money for the Conservative ^Party of Ontario. You consider that as normal business ...

Mr. Smith: He ~~h~~ asked me if I would go out and make a couple of calls with him and I said, yes I would, ~~and~~ I consider that normal, yes.

Mr. Deans: In your dealings with Mr. Brown, did you discuss the Hydro building often, the Hydro project, ~~often~~ during these lunches?

Mr. Smith: No, I would say no. He might say, is there any word on Hydro, and I would say no, and that would be about it. No, I didn't get into long discussions with him.

Mr. Deans: At the time ...

Mr. Smith: I never asked ... I've got to be careful.

Mr. Deans: Yes, I would if I were you.

Mr. Smith: All right.

Mr. Deans: At the time of the April 14 meeting, though, you had discussed with Mr. Brown your desire to have the Hydro contract for your company?

Mr. Smith: Yes.

Mr. Deans: And the result of that was the notation the postscript that you had just finished talking to Mr. Brown when you wrote to Mr. Cronyn.

Mr. Smith: Yes.

2246 follows

September 10th, 1973

2246 - 1 2.20 - 2.25 pm
AA

Mr. Deans: Subsequent to that, did you then discuss it further with Mr. Brown at any point?

Mr. Smith: Not at any — not serious ^{ly or} ~~care~~ at any length or anything.

MR. Deans: Well, let's say you discussed it frivolously at no length, but did you discuss it with Mr. Brown?

Mr. Smith: I don't recall, but I won't deny whether I did or not. I don't recall — it was never a point, never the object of a phone call. I would ~~not~~ say I never called him. If he said something ⁱⁿ passing, I might have commented, but I never called him about it or asked him anything.

Mr. Deans: Did Mr. Brown ever enquire of you whether there had been any results of the phone call that he made to Mr. Gathercole?

Mr. Smith: No, he did not.

MR. Deans: Did you ever offer to Mr. Brown the opinion that there had been no results of the phone call?

Mr. Smith: No, I didn't ask him to make the call and . . .

Mr. Deans: No, but he did make it and you were aware of it.

Mr. Smith: I was aware of it, but I didn't request him to make it and he just said, "I'll call him," and I said, "Well, if you want to, that's fine" ~~but~~ but I don't think there is any point."

Mr. Deans: Did you lunch with Mr. Brown during the time when you were mildly upset ^{over} ~~and~~ the fact that you hadn't received the Hydro contract and were questioning the way in which it had been done?

Mr. Smith: ~~Yes~~ Yes, I would certainly lunch with him because when I go in the London Club, if he is sitting with this one group and there is an empty chair, I generally sit down with him.

Mr. Deans: So that during the time that you were annoyed

September 10th, 1973

2.20 - 2.25 pm

2246 - 2

AA

(MR. Deans)

with the fact that the contract had gone elsewhere, you were lunching with Mr. Brown.

Mr. Smith: I lunch with Mr. Brown throughout the year and you can

Mr. Deans: Did you discuss the fact that you were upset about the final conclusions of the Hydro contract?

Mr. Smith: I am not sure, Mr. Deans. I don't recall. I won't — it's not

Mr. Deans: You don't recall whether you ever did.

Mr. Smith: NO, I don't recall really. I don't deny or confirm it. I just don't — it wasn't an issue or anything

Mr. Deans: But, it was an issue, Mr. Smith. In your mind it was a serious issue.

Mr. Smith: Not between Mr. Brown and me, it wasn't.

Mr. Deans: Well, you keep saying it wasn't an issue and it *wasn't important...*

Mr. Smith: I ~~said~~ *did not.* I said between Mr. Brown and myself, it wasn't.

Mr. Deans: It was an issue between you and MR. Brown because you had spoken to Mr. Brown about it and written to Mr. Cronyn that MR. Brown had been involved in it.

Mr. Smith: No. No.

Mr. Brownlie: Surely the word "issue" Mr. Deans, implies something other than you are using it as.

Mr. Smith: I am sorry - I wasn't - I just - I ~~called~~ *casually mentioned it to Colin...*

Mr. Deans: It ~~is~~ ^{is} matter of concern.

Mr. Brownlie: That is not the word you used.

Mr. Deans: I will change the word.

Mr. Brownlie: You are using the word "issue" in the sense of something which is a sense of conflict.

September 10th, 1973

2.20 - 2.25 pm

2246 - 3

AA

(Mr. Deans)

MR. Deans: NO, I wasn't using it in a sense of conflict.

Mr. Brownlie: Now, that is the very thing that this witness has been attempting to stop doing, which is to bring Colin Brown in here as if he were a protagonist in some sense.

Mr. Chairman: Well, gentlemen, if you would ~~address~~^{address} your ~~remarks~~^{remarks} to the chair please.

Mr. Deans: I'll reword it. Did you discuss the matter with Mr. Brown during the period when you were upset?

MR. Smith: ~~Not specifically~~ Not specifically that I RECALL.

Mr. Deans: Have you ever discussed with Mr. Brown the fact that you talked to the press about the final outcome of the Hydro contract?

Mr. Smith: No.

Mr. Deans: Did you ever discuss . . .

Mr. Smith: Oh, yes I did. I talked to him last Friday night. I said, "I have got to go down to the Hydro hearings."

Mr. Deans: Did you ever discuss with him prior to the newspaper articles being written . . .

Mr. Smith: No, I did not.

Mr. Deans: . . that you were annoyed that nothing had happened in your favour.

Mr. Smith: No, I did not.

Mr. Deans: I don't want to misrepresent your position. Mr. Smith, you were quite active in pursuing the contract with people other than the Hydro officials, I think it is fair to say ~~that~~ that you spoke to a great number of people, other than simply Hydro officials. You spoke to Joe Barnicke. You spoke to

2272247 - 1 follows

A Sept.10/73
2.25-2.30p.m.
B.A.

H-2247-1

(Mr. Deans)

~~To a great extent, people think that, through Hydro officials,~~
~~you spoke to Joe Barnicke, you spoke to~~ Ernie Jackson, ~~You spoke to..~~

Mr. Smith: No, I didn't talk to Ernie Jackson. I just talked to him that once. *I didn't actively pursue it.* I actively pursued it mostly through trying ~~to~~ to find out from Hydro.

Mr. DEans: Well, ~~you~~ trying to find out through Hydro, but you spoke to Joe Barnicke, ~~you~~ to Colin Brown, to John Cronyn, to Ernie Jackson.....

Mr. Smith: No, way, no way. I had lunch with Colin Brown and I didn't ask Colin Brown anything; I didn't ask him to do anything, and so I won't accept that.

Mr. Deans: You won't accept it, why?

Mr. Smith: I won't accept that I asked him...

Mr. DEans: I didn't say you asked him anything.

Mr. Smith: You did, you said, "pursue". *And I did not cons*

Mr. Deans: I said you spoke to a number of people.

Mr. Smith: You ~~me~~ said, "pursue".

Mr. Deans: You spoke to a number of people ~~in~~ in your pursuit of the Hydro contract other than the Hydro officials.

Mr. Smith: I didn't speak to Colin Brown in pursuit of the Hydro contract. I talked at lunch to Colin Brown one day.

Mr. Deans: "I have just talked to Colin Brown who was talking to George Gathercole who said he was going to be talking to Darcy McKeough in the next month, and thought we were one of the proposals being seriously considered." Those are your words. You spoke to Colin Brown.

Mr. Smith: I know that.

Mr. Deans: Well, that is what I.....

Mr. Smith: I did not, ^C Colin Brown phoned me.

Mr. Deans: As a result of a conversation you had had with him previously.

Mr. Smith: As a result of a conversation he had had with me.

H-2247-2

Mr. Deans: Well --

Mr. Smith: I didn't pursue Colin Brown, and I didn't call Colin Brown and I didn't ask Colin Brown.

Mr. Deans: Okay.

Mr. Chairman: Any other questions from any other members?
Mr. Newman and then Mr. Glen Hodgson.

Mr. Newman: ^{My q} ~~My q~~ Question is to Mr. Shibley and it might have a reflection while Mr. Smith is still here. As a committee member, I didn't really find out ^{least} Exhibit 232, this letter, did ~~really~~ really, finally surface.

Mr. Shibley: I thought I did make that clear. I asked Mr. Smith, at the meeting on Friday, if he had written another letter in April of ~~1972~~ 1972, and he said, yes, he had, and produced it.

Mr. Newman: Fine. Mr. Smith, I am sure that this is rather a general question, but, I am sure you have done a lot of reflection since these enquiries have started, I am sure you have followed ^{them} ~~it~~ in the newspaper with a great deal of interest, and I go back to Exhibit 172, Mr. Mc~~Gu~~liffe's article in the ~~paper~~ paper, I think you are aware of it. Have you any reflections on the article, and I will quote from the article, "I was told to keep my mouth shut or I would never get another government job". Have you had any reflections or thoughts or things you would like to tell the committee since you gave your evidence here some two months ago? Would you like to change any of your thoughts or ideas about that statement?

Mr. Smith: ~~Yes~~ ^{No} No, I wouldn't want to change anything. I have thought about it a lot. I have tried to think about ~~everything~~ everything. You get listening to so much testimony and you ~~may~~ sometimes wonder if people are trying to put words in your mouth. You get wondering about everything. I have given an awful lot of thought to it, as recently as last night, ^{or yesterday,} and all week^end. I would like to say that if I was trying to hide anything, why

Sept. 10 73
2.25-2.30p.m.
B.A.

(Mr. Smith)

would I have let Mr. McAuliffe see all of our files?
That is the press you are letting in. If I was threatened,
there is no way you would ever go to a paper if somebody told
you to lay off. You would probably lay off. And I have
never been threatened in my life about a contract and --
no, I have thought about it a lot.

Mr. Henderson: That, Mr. Chairman, is a statement to
me. You have never been threatened.

Mr. Smith: I have never been threatened in connection
with the Hydro building.

Mr. Henderson: Mr. Chairman, this is what our whole
hearing is with respect to.

Mr. Smith: That's right.

Mr. Chairman: Earlier, you were talking about your
credibility. Where do you place your credibility now, in
~~the~~ regard to this, or ~~was~~ was it all a figment of the
reporter's imagination?

Mr. Henderson: Mr. Chairman, before ^{he} he answers that,
I was just ready to start a series of questions ~~to~~ to the
witness, but my question ^{is} is out now. He has never been threatened
I would have to cease my questions right here, sir.

Mr. Chairman: Is all of what the reporters wrote a
figment of their imagination?

Mr. Smith: I say it is, sir.

Mr. Brownlie: He has explained all that, Mr. Chairman,
and it has to do with the distinction between the word "warn" and
the word "threaten".

Mr. Chairman: Any other questions?

Mr. Henderson: Mr. Chairman, I might just add that in
checking ^{out} the evidence along the way, all the named that have
been mentioned have certainly denied any threats, and it leaves us
in the committee, -- but I am glad to hear you say you were never
threatened, Mr. Smith. This answers a lot of questions.

(Tape H-2248 follows)

Sept. 19/73

2:30-2:35 pm

C.B.

(Mr. Henderson)

in the committee but I'm glád to hear you say you were never threatened, Mr. Smith. This answers a lot of questions.

Mr. Smith: Mr. Henderson, I told Mr. Shibley that I'll take a polygraph test, I'll do anything, to try and convince him, and whatever they want they can question me with one. I'm not going to change any of my statements that I've made.

Mr. Wm. Newman: Mr. Chairman, *following up on* what your ~~lawyer~~ lawyer said, Mr. Smith, I said threatened, but were you ever warned to keep your mouth shut or you'd never get another job?

Mr. Smith: No, I wasn't.

Mr. Shibley: Were you ever warned that you shouldn't pursue the matter because you were doing government work?

Mr. Smith: No, no I was not, Mr. Shibley. The only reference I can make is the one about Mr. Barnicke and that's the one I'll go back to and I'm sorry.

Mr. Henderson: Mr. Chairman, has the witness had an opportunity to ~~review~~ review Mr. Barnicke's evidence? I think it only ~~fair~~ fair that this should be placed in front of him.

Whether he has or not it has certainly been
Mr. Chairman: ~~Is~~ available to him if he wanted to, but I don't know, whether he ~~has~~ has.

Mr. Smith: I think I read parts of it, Mr. Henderson.

Mr. Henderson: A very short amount of evidence, Mr. Smith, I think for your own good you should have read it before you were a witness here.

Mr. Smith: I think I did read parts of it in the paper. I'm not sure if I read it in the transcript or not.

Mr. Chairman: Glen Hodgson.

Mr. R.G. Hodgson: Mr. ~~Chair~~ Smith, are you connected with London Life in anyway?

Mr. Smith: Yes, I'm a director of the London Life.

Mr. R.G. Hodgson: Do you know one Mr. Millman?

Sept. 10/73
2:30-2:35 pm
C.B.

Mr. Smith: Yes, I know Mr. Millman.

Mr. R.G. Hodgson: Have you, in around the month of November 1972, did you discuss any financing for the Ontario Hydro building?

Mr. Smith: No sir.

Mr. R.G. Hodgson: Your connection with Mr. Brown, is that also through ~~the~~ London Life?

Mr. Smith: No, that is ~~not applicable~~.

Mr. R.G. Hodgson: Did it come through that originally?

Mr. Smith: No, I've only been a director for three years.

Mr. R.G. Hodgson: Three years.

Mr. Smith: And I've know ~~Colin~~ Colin about 23 or so years.

Mr. R.G. Hodgson: At any of the directors' meetings ~~it~~ was the financing for the Ontario Hydro building every mentioned?

Mr. Smith: No sir.

Mr. R.G. Hodgson: Thank you.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Mr. Smith, I have a few questions. I'm going to try to be direct because of the problem which your evidence poses for me and perhaps for other members of the committee. I trust that by being direct I'll also be relatively brief, but I would be at all ~~to~~ sure about that.

In the Globe and Mail report which is exhibit 172, the follow paragraph appears: "A senior executive of one of the three unsuccessful firms that bid on the project said he was called several weeks ago by a source close to the Ontario Cabinet and high in the Progressive Conservative Party and told the Globe and Mail was investigating ^{ing} ~~ing~~ I was told to keep my mouth shut or I would never get another government job; the company official ~~said~~ ^{said}. He insisted he not be identified."

The evidence is clear that you are the person who is

Sept. 10/73
2:30-2:35 pm
C.B.

(Mr. Renwick)

referred in that paragraph.

Now the problem which I am faced with and which the committee is going to be faced and to which we are going to have to give an answer, not as to whether or not the words constituted a threat in your mind; that is a separate question and I want to put that to one side. We have the evidence ~~which~~ of Mr. McAuliffe, corroborated and as a matter of law, corroborated in my judgement almost conclusively by the city editor of the Globe at that time, that those words were in fact used by you in your telephone conversation with Mr. McAuliffe on the night that he called you to arrange for the interview.

Now I have three alternatives on the evidence which is in front of me. One is that those words were a figment of your imagination and you used those words for the purpose of persuading the Globe and Mail to print a story which had gone dead after your effort with Mr. Manthorpe in November 1972.

Secondly, that the person referred to is Mr. Cronyn and despite all of the problems with Mr. Cronyn's evidence, he does not, on the evidence that we have available to us at the present time, fit the description of a person of a source close to the Ontario Cabinet and high in the Progressive Conservative ~~movement~~.

H 2249 to follow

H-2249-1

(Mr. Renwick)

~~the Progressive Conservative Party.~~ It is arguable that he is a person who could be called a source close to the Ontario cabinet, but on our evidence he is not a person high in the Progressive Conservative Party. And yet your identification of the person about whom you were making a reference in your talk with Mr. McAuliffe was to Mr. Cronyn. Now the second possibility, therefore, ^{is} it is Mr. Cronyn, and I have great difficulty believing that it was Mr. Cronyn despite all the contradictions in his evidence.

Now the third alternative is that there is a person or persons unknown to this committee to whom you spoke ~~maybe~~, or who spoke to you, and who used words the same as or equivalent to the words which were quoted by Mr. McAuliffe.

Now bearing in mind the reservation which I made that I am not at this point dealing with the question as to whether or not those words, in fact, ~~imputed~~ imputed a threat, is there anyone who at any time made any reference to you in language similar to or substantially the same as the phrase or sentence, "I was told to keep my mouth shut or I would never get another government job"?

Mr. Smith: No sir, there is no one.

Mr. Renwick: Let me go at it then a second way. I consider, and this is my own personal judgement, Mr. Smith, that on the evidence which is available to us you were quite justified in raising the question. I may not approve of the methods or I may not have chosen those methods by which you raised the question and brought it to the attention both of the public and of Hydro, the method I am not talking about. But, in my view, you were quite justified in the circumstances in feeling not that you felt badly because you didn't get the job, but that you felt you didn't have a fair shake in the competition. Now, as I say on that basis, ~~and~~ I can as a result of that understand a degree of concern about making the matter public, ~~others~~ others have indicated, ~~that~~ that if you lose, you lose, and you take your chances, ~~and~~ all of those usual arguments which are made, but in the polite world of sophisticated business you keep your mouth shut. Now I want to know whether, in the light of those

H-2249-2

(Mr. Renwick)

remarks, whether or not there was any communication to you of any kind which could to a normal ~~and~~ person have been called a threat?

Mr. Smith: No, there ~~was~~ none.

Mr. Renwick: Well, then, Mr. Smith, ~~was not~~ whatever the remark that was made by you to Mr. McAuliffe in response to his inquiry and request for an interview on the night before he came to London to see you, was that a figment of your imagination, and that there was no threat, ~~but~~ that you wanted to create in the minds of the reporter for the Globe and Mail something sufficiently serious that he would write a story about it?

Mr. Smith: No, that wasn't in my ~~K~~ imagination, or a figment of my ~~i~~magination. He said he wanted to come down and interview me on a story. I didn't tell him ~~I~~ had ever been threatened.

Mr. Ren^Wwick: Well, then, is the logic that I am driven to, the fact that the statements made by Mr. McAuliffe under oath, and corroborated by his city editor, were never made?

Mr. Smith: I don't recall making them; that is my testimony. I think he got two statements mixed up. The logic I would say, if I said those things to him over the phone, and he met me the next day, and he talked to our people for a couple of hours, why did he not ~~mention~~ mention these things? If this was obviously the most important, significant thing, and he is going to put ~~it~~ in the headlines of his paper, why didn't he ask me about them, or anyone of our people.

H02250-1 follows

September 10, 1973
2:40 - 2:45 p.m.
B.G.

H-2250-1

X (Mr. Smith)

~~important thing, and he's going to put in the headlines of his papers. Why didn't he ask me about them, or any one of our people the next day?~~

Mr. Renwick: Mr. Shibley, I need your help. I think he did

~~bring it to the next day.~~

Mr. Shibley: ~~He did.~~ *Yes, I*

Mr. Renwick: ~~He did~~ *raise* it the next day.

Mr. Shibley: Yes, I'm just checking my notes.

Mr. Renwick: Yes.

Mr. ~~Shibley~~ Brownlie: I thought *you never* had any testimony whatever, unless I have been missing something that's happened here. I thought you had never reached him, and certainly when I left here you had ~~not~~ taken him up to the night of April 16, if I'm not correct.

Shibley: ~~no~~ He
~~Mr. Shibley~~ *He* was recalled.

Mr. Brownlie: He was recalled. Well, at the point at which this witness and *we* were present, ~~he~~ *it* certainly you had never got him to that day because we were referring to *it* at that time -

Mr. Shibley: But I think of much more significance was the evidence that the secretary, Mrs. Shuttleworth, had overheard a remark made by Mr. Smith to Mr. McAuliffe, as they were on their way out, which I think Mr. Smith confirmed he did make, and which words could be taken to mean what was attributed to Mr. Smith in the report in the ~~the~~ Globe & Mail, and I'm just looking to see if I can't quickly find that.

Mr. Renwick: I wish you would, and then there was the period of time when the two of them, Mr. McAuliffe and Mr. Smith, were together by themselves on the plane back to Toronto, after the interview in London, Ontario.

Mr. Brownlie: I don't think though, with respect, Mr. Chairman, that that was the point the witness was trying to make in answer to Mr. Renwick. I thought the point he was trying to make

September 10, 1973
2:40 - 2:45 p.m.
B.G.

(Mr. Brownlie)

was that, "Why, if I'd said that the night before, didn't he say it to one of the three of us during the course of the long meeting that he was there in the morning?"

Mr. Smith: Why didn't he get confirmation of it?

Mr. Brownlie: Mr. Shibley's answer was that at the end of ~~the~~ meeting he said something, but his point was other than that.

Mr. Renwick: Well, I think that it is common to parry a question with another question. Let me ask you. At the time, at the ~~the~~ risk of repetition, at the time that you had your meeting in your offices in London, Ontario, either alone with Mr. McAuliffe or in association with anyone else, did he raise with you any questions with respect to the statement you made that he ~~asked~~ stated that you had ~~made~~ made to him the night before?

Mr. Smith: No.

Mr. Renwick: None whatsoever?

Mr. Smith: Not that I recall, no. Definitely not.

Mr. Shibley: Mr. Renwick, in Hansard at page 767-2, the witness was giving evidence, about the middle of the page. "My secretary told me that she heard me say this." I'm sorry, I should have started back. "He talked on Monday afternoon, David Grant and my secretary, trying to piece this thing together, and my secretary said, 'As you were going out the ~~door~~ door, words along the line, "I have been told to be quiet or this could affect future business," or "I was never told I could never get another job, but it could jeopardize future business." My secretary told me that she heard me say this. The only thing I am going to say is that when I met McAuliffe, I met him and I told him what I knew about Hydro, this concerned me for fear of what he would print; I said I did not want my name connected with it; I did not want Ellis-Don connected, and On the way out I said to him 'I have been told to be quiet or I could hurt my business'. I don't recall the actual words; it would be better if you asked her what she recalls."

September 10, 1973
2:40 - 2:45 p.m.
B.G.

(Mr. Shibley)

"Shibley: Mrs. Shuttleworth was surprised that you would make that kind of a disclosure to a reporter? Smith: Yes, and I feel, — Shibley - She has a very precise memory of your having made that statement to McAuliffe as you were parting. Smith: That is right. She said I said it. I didn't recall, because, as I say, there is a worry that you could lose business and quite possibly our company could lose business. I had to consider that before I spoke to these fellows. I had been told, you can put it any way you want to, 'Be quiet', I don't think 'shut up' is the proper word, or you could hurt your company, that's probably as precise as Mr. Smith ever became on what he had been told, and eliminating the ~~verbiage~~ verbiage as to 'you can put it any way you like', ~~you~~ if you exclude those words, 'I had been told, be quiet, or you could hurt your company'. Mr. Shibley: Yes."

And that was your own evidence on the occasion of the hearing, Mr. Smith. An earlier excerpt was what you said to McAuliffe. You yourself reported as having said to McAuliffe what Mrs. Shuttleworth herself confirmed you said to McAuliffe on the way out.

~~I don't think~~
~~Now, going back to Mr. Brewster, I you never said you~~
~~were~~

(Tape H-2251 follows)

Sep. 10/.73
2.45-2.50 pm
V.H.

(Mr. Shibley)

~~and I don't think~~ ^{Barnicke,} Getting back to Mr. ~~Barnicke~~ you never said you were threatened but it was a question of being warned, using his terminology. "I had been told ^{to} be quiet or you could hurt your company." Were words such as that employed? That's what your evidence was on that occasion.

Mr. Smith: What's your question?

Mr. Shibley: Well, did somebody say to you, "be quiet or you could hurt your company"?

Mr. Smith: No, the only -- we will go back to Barnicke, that was the only reference ^{I'd} made.

Mr. Renwick: Mr. Smith, let me pick it up there. I rule out Mr. Barnicke as ^{not} a person close to the Ontario cabinet and he is not a person high in the Progressive Conservative party so I consider that to be a red herring.

Mr. Smith: I told ...

Mr. Renwick: That isn't the person we are searching for.

Mr. Smith: No, but I told Mr. McAuliffe when he came in on that morning, I said, "You fellows have stirred things up quite a bit" and he said, "What makes you think so?" I said, ^{I had} ~~I had~~ had a call from someone close to the government or high ^{in the Conservative} ~~in the Conservative~~. I don't recall the exact statement but somebody high up that knows what's going on and they told me the matter was coming up in the House so therefore they were concerned about it, and then we got off on another tack.

Mr. Renwick: Just let me stop there. You said you had a call in which words such as that were used to you?

Mr. Smith: No. I said I had a call and I was told that the matter was coming up in the House and that's what I told McAuliffe that morning, ~~he~~ and he said, "Who called you?" and I said, "I am not going to tell you".

Mr. Renwick: Could I go back as to what you said, I realize the part about coming up in the House, but didn't you just preface your remarks with some other reference to this matter? Just now.

Mr. Smith: No. No.

Mr. Renwick: All right, carry on.

Mr. Smith: I prefaced them to say that, "You fellows had stirred things up where you have got them concerned down in Toronto ^{at} ~~with~~ the government".

Mr. Henderson: You said this to the reporter?

Mr. Smith: I said to the reporter, when I first met him, I said, "You fellows have stirred things up quite a bit" and he said, "What makes you say that?", I said, "I've had a call from someone" and it ^{was} kind of bantered back and forth and he said, "Who called you?" and I said, "Someone that knows and someone close to the government" and I said ~~At~~ they had called me and said this matter was coming up in the House and that I would be getting a call from the Globe and Mail.

Mr. Renwick: Now who was that?

Mr. Smith: That was Cronyn who called me and said I would be -- I could be getting a call from the Globe and Mail.

Mr. Renwick: All right. I would just like you to know, Mr. Cronyn is very positive and has reiterated before this committee on the two occasions that ^{that} ~~was~~ particular call which he made to you was placed after Mr. Nixon tabled his questions in the Ontario Legislature on December 1.

Mr. Smith: Yes.

Mr. Renwick: Assuming for the moment, that that is an accurate statement, Mr. Cronyn's evidence was that he didn't know it was coming up in the House in advance of that time. Now the man who used these words to you was Mr. Cronyn?

Mr. Smith: Whether he said "coming up in the House" -- I thought he said, "coming up in the House". You know, I don't know about tabled, about coming up or what have you. I can't -- I don't know -- he said it was going to be brought up.

Sep. 10/73
2.45-2.50 pm
V.H.

Mr. Renwick: Well, bearing in mind, Mr. Smith, that Mr. ~~W.H.~~ McAuliffe saw you on April 15 or 16, which resulted in the article being published on ~~April 15 or 16~~ April 30, and that Mr. Nixon had raised the matter in the Legislature December 1, and that it had then for practical purposes gone dead with the exception of a further statement by Mr. Nixon in the House in the course of some remarks in the Throne Debate, why would you have recalled words such as you have indicated you recall from Mr. Cronyn in April that were made to you at least in December if not earlier?

Mr. Smith: Well, they are not hard to recall because he had said that the Globe and Mail were -- could be calling and they were

H-2252 follows

September 10th, 1973

2.50 - 2.55 pm

225 2 - 1

AA

(MR. Smith)

~~He had said that the phone and that he had said that~~
~~as I said they were~~ aware of it, so I just mentioned this as a casual remark to McAuliffe.

MR. Renwick: Well, was your interpretation of the words used by you to MR. Cronyn when he made them, which you indicated was in January, he thinks was in December . . .

Mr. Smith: Yes.

MR. Renwick: . . . this is in April, are you referring to MR. Cronyn ~~as~~ the person who indicated to you that you could lose business or that your company would be hurt?

Mr. Smith: No, that wasn't Mr. Cronyn.

MR. Renwick: Well, who was that?

Mr. Smith: I said that was MR. Barnicke. I didn't say it was ~~Mr. Cronyn~~ Mr. Cronyn. Mr. Cronyn didn't say that to me.

MR. Renwick: Well, I may come back in a minute or two to that because it ~~was~~ rather than be

Mr. Smith: See, ~~on the~~ ^{on the} way out, Mr. Renwick, ~~that~~ ^{it} day, on the way out, after we had talked with Mr. Grant and everything about him not mentioning our name and what-have-you and other things, he said, "Now, who was the person from the Ontario government that phoned you?" And I said, "I am not going to tell you."

And he started naming off names and as MR. Shibley says, I smiled at one of the names, ~~but~~ ^{but} actually I smiled because I ~~realized~~ realized that he was going to start going down the whole name everybody in the world until you blinked or ~~something~~ something and then he would say, "That's the person."

MR. Renwick: I want to clear up in my mind another area. Was there ever any discussion at any meeting at which you attended in connection with your work with the London Life Insurance Company about the Ontario Hydro building, apart

September 10th, 1973

2.50 - 2.55 pm

2252 - 2

AA

(Mr. Renwick)

from your discussions with Mr. Colin Brown?

Mr. Smith: Was there ever any other discussion at board meetings, did you say or . . .

Mr. Renwick: At board — I doubt if there was ~~at that~~ specifically at a board meeting, but if you would answer that for the purpose of the record.

Mr. Smith: I think I did say that on one occasion, ~~Mr. Cronyn~~ MR. Cronyn had said that Mr. Moog had the contract.

Mr. Renwick: I understand that, but that was not at a board meeting in session, as I understand.

Mr. Smith: Oh, nothing has ever come up at a board meeting in session.

Mr. Renwick: Yes, let's get that clear. But, in the interval immediately ~~before~~ before a board meeting or at some recess in a board meeting, or immediately after a board meeting . .

Mr. Smith: No, nothing other than that one remark I mentioned.

Mr. Renwick: And was anybody else present when Mr. Cronyn made that remark to you?

Mr. Smith: No.

Mr. Renwick: And did you know it when he made it to you? Did you know the information which he gave to you?

Mr. Smith: Yes, I think I was aware of it when he mentioned it to me. I think it was pretty well old information.

~~Mr.~~ Mr. Renwick: All right, now, if I could turn to the letters of April 14th and July which are — July 14th? I think you should be careful what you do on the ~~14th~~ 14th, Mr. Smith, of any month.

MR. Brownlie: It's not the ides of March.

Mr. Genest: It's Bastille Day.

Mr. Renwick: The letters of April 14th and the letters of July 14th, which, if I can use the term, were suppressed, are now going to cause us an immense ^{amount} of trouble, and excuse my

September 10th, 1973

2.50 - 2.55 pm

2252 - 3

AA

(Mr. Renwick)

irritability, because life's rather short, and I have been at this now, along with my colleagues, for some three months.

First of all, let me say, Mr. Smith, that those letters on any reading, are relevant and material to the matters before this committee, and I do not accept your judgement or Mr. Cronyn's judgement with respect to the July 14th letter, that they were not of significance, or material to what we were discussing. Now, I don't think I need to elaborate in detail about that, but just for the record let me say that where there is a meeting with Mr. Candy on the 10th of April, a letter from you to MR. Candy on the 11th of April, a letter from you to Mr. Cronyn referring to ~~those~~ those discussions with Mr. Candy, ~~and~~ an assertion by you, positively, that you can give Hydro a good deal, and a request by you to Mr. Cronyn to give you further direction as to what you might do about this, I consider that ~~relevant~~ relevant to the work of the committee and cannot be played down.

Now, I want to ask you whether or not you ~~even did receive~~
~~from Mr. Cronyn any form of acknowledgement of this letter,~~
~~either in~~

2253 - 1 followd

Sept. 10./73

2:55-3 pm

C.B.

(Mr. Renwick)

ever did receive from Mr. Cronyn any form of acknowledgement of this letter, either in writing, by telephone, by personal communication face to face, by memo^t or any other way after you wrote this letter?

Mr. Smith: No, I had no acknowledgement of any kind, verbal ^{or} anything.

Mr. Renwick: And you did not ~~am~~ at any time raise again with Mr. Cronyn the fact that you had written him this letter on April 14th?

Mr. Smith: I just sent him that ~~a~~ letter as a director of the company not as a - and asked his advice really. But I didn't receive anything back from him at all.

Mr. Renwick: ~~Now~~ with respect to Mr. Colin Brown, what did you anticipate that Mr. Colin Brown would accomplish by talking to Mr. Gathercole?

Mr. Smith: Nothing.

Mr. Renwick: Did Mr. Colin Brown indicate to you that he knew Mr. Gathercole?

Mr. Smith: Yes.

Mr. Renwick: And how well did he indicate he knew Mr. Gathercole?

Mr. Smith: I don't think he said how well. ~~He said~~ I think he said he played golf with him. ^{Colin} ~~He~~'s a top golfer and I think he said he ^{had} played golf with him. He didn't say how well he ~~knew~~ him, ~~he~~ just said, I'll give him a call. I didn't ask him to give him a call.

Sept. 10/73

2:55 - 3 pm

C.B.

Mr. Renwick: I heard that evidence, but it was sufficiently important that, having lunched with you from your conversation he indicated that he would call Gathercole. You certainly didn't tell him not to call him.

Mr. Smith: I couldn't ^{have} ~~as~~ cared less really, that much. He said he'd call him and I said don't bother or I don't really care if you call him.

Mr. Renwick: All right, but he did call and he reported back the conversation to you.

Mr. Smith: Yes, he did.

Mr. Renwick: And you in your postscript to the letter indicated that Mr. Gathercole was going to be speaking to Mr. McKeough.

Mr. Smith: Yes that's what he mentioned so I just put it in, I didn't.

Mr. Renwick: And you specifically stated, "I would appreciate it if you, that's Mr. Cronyn, could put in a good word with Darcy for me." I put it to you Mr. Smith that what you really wanted was, at the point in time when Mr. Gathercole spoke to Mr. McKeough, if Mr. Brown's information was correct, that you wanted Mr. McKeough to recognize who you and your company were. That's quite legitimate, I'm ~~not~~ ^{simply} saying isn't that what you wanted to accomplish?

Mr. Smith: Yes I wanted him to know who we were.

Mr. Renwick: You wanted a light to go on in Darcy McKeough's mind, "Oh that's the company that Mr. Cronyn spoke to me about."

Mr. Smith: Yes, that's right. I really didn't pay any more attention to this. I didn't think anything would ^{ever} come of it.

Mr. Renwick: And then at the last of your letter, and my colleague from Brampton - ~~my~~ ^{my} colleague from Lambton pointed this out ^{you say}.

Mr. Chairman: Careful what ^{you say}.

Mr. Genest: Freudian slip.

Sept. 10/73

2:55- 3 pm

C.B.

Mr. Renwick: "I will also work on it myself." What did you do about it after this letter?

Mr. Smith: Nothing, nothing more than has come out in the transcript. I just kept trying to find out what was going on. I think we've been through that ~~about it~~.

Mr. Renwick: So I take ~~it~~, Mr. Smith, that what you are saying to us is that as between strangers there was never any word, sentence or statement made by you, by anyone, which on the face of it could constitute a threat.

Mr. Smith: No, nothing. If I had been threatened, Mr. Renwick, I would have mentioned it to my wife, I would have mentioned it, (or anything like that, I would have mentioned it to my vice-president,

Mr. Renwick: Just be careful. ~~We~~ don't want to call too many more people now.

Mr. Smith: ~~I~~ would have mentioned it to Mr. Grant and Mr. Bayley, our vice-president. I've never mentioned it, I would have mentioned it to colleagues probably. But I've never mentioned it.

Mr. Renwick: All right.

Mr. Smith: I've never mentioned it to anybody; I never said a word like that. I've never been threatened.

Mr. Renwick: All right, ~~now~~ if I can go to the conversation which you had with Mr. Manthorpe when you first called him and the time ~~so far~~ as his evidence is concerned and ~~with a great deal of narrowing down...~~

H 2255 to follow

H-2254-1

(Mr. Renwick:)

~~called him, and the time so far as his evidence is concerned, and~~
with a great deal of narrowing down, appears to be somewhere around,
give or take a few days, November 27.

Mr. Smith: That could be.

Mr. Renwick: 1972.

Mr. Smith: Yes.

Mr. Renwick: The inference from Mrs. Shuttleworth's evidence
is that you had not spoken with Mr. Cronyn, or he had not spoken
with you, prior to that time.

Mr. Smith: That is my opinion too. I thought it was
January when Cronyn called me, but I don't tie the two of them
together.

Mr. Renwick: Well, Mrs. Shuttleworth's evidence is that when
Mr. Cronyn called, and you hung up the ~~the~~ phone, the remark which
you made, and the interpretation which she left with the committee,
was that you said "I wonder what" in substance the comment that you
made was equivalent to "I wonder what John Cronyn would think if he
knew I had already called the Globe and Mail?". Now that is the
inference that Mrs. Shuttleworth left with the committee.

Mr. Smith: She wasn't there. He called me at home, Mr.
Renwick.

Mr. Renwick: Yes, but Mrs. Shuttleworth was referring to
a comment which you made to her about his call to you.

Mr. Smith: Oh yes, I see.

Mr. Renwick: Now is that a correct inference; that when
Mr. Cronyn called you you had already called the Globe and Mail?

Mr. Smith: Yes.

Mr. Renwick: So that your evidence is that when you spoke
with Mr. Manthorpe, and Mr. Manthorpe's recollection is that someone
close to the Premier's office, are you in a position to help us
as to who that person was?

Mr. Smith: No, I'm not. I didn't recall saying that, And
I would still go back to ^{Barnicke's} article, thing about...

H-2254-2

Mr. Renwick: But you would agree with ~~Mr~~ me that Mr. Barnicke, by no stretch of the imagination on his own evidence, would want to be considered to be a person close to the Premier's office?

Mr. Smith: I agree with you there.

Mr. Renwick: Do you see the problem that ~~we~~ has come through to me now?

Mr. Smith: I see the problem.

Mr. Renwick: Perfectly clearly that we are being asked to decide whether or not the Globe and Mail reporters are giving false evidence before this committee.

Mr. Smith: I don't believe Mr. Manthorpe.

Mr. Renwick: It is just as blunt as that.

Mr. Smith: I realize that. It has got to be one of us, doesn't it?

Mr. Renwick: No, I don't think it does. I think there is an explanation, Mr. Smith, and I think you hold the key, and I don't know how to unlock the door.

Mr. Smith: I don't hold the key as far as I know. Mr. Shibley and I tried to talk this over last Friday and we couldn't. He said "Could you have talked to Cronyn in the meantime about it?", But I don't recall where he'd get "close to the Premier's office". I would have thought I would have said to him ^{if} I was really thinking about our business ^{you know} ~~if~~ I said anything, how would it affect our business? And if there is going to be ^{if} if the thing is going to come out, you don't want to get your name bandied about. And Joe's remark about "I wouldn't say anything because it could jeopardize your business" was in the back of my mind when I talked to Manthorpe.

Mr. Shibley: Mr. Renwick, I heard you and I just remind you that the accuracy of some of this evidence is now perhaps in question. I am talking about evidence of four people. Now in respect of the timing of the communication from Cronyn to Smith, you will remember that Mrs. Shuttleworth helped pin that timing down by reference to an article in the Globe and Mail which was published on November 3, and said that Smith reported to her some two to three weeks later of his call to Manthorpe, which would put it smack within the week of the 27th. You will remember also that Mr. Fleck has an entry

H-2254-3

(Mr. Shibley)

on November 7 that Cronyn talked to him about the Ellis-Don complaint on or before that day. So that if one concludes that Mr. Cronyn is in error as to the time he made his call, ~~in~~ ⁱⁿ other words, that when he said it was after the thing became public, because he wouldn't have felt free ^{to} ~~to~~.

H-2255-1 follows

Sep. 10/73
3.05-3.10 pm
V.H.

(Mr. Shibley)

~~in other words, when he said it was after the thing became public because he didn't have felt free to discuss it until~~
then, and having -- if that evidence is found to be wrong and rather that he, in fact, placed the call before the matter became public, namely within the month of November, that resolves the one conflict with Mr. Manthorpe's testimony. In terms of describing ~~of~~ what Mr. Smith recorded to Manthorpe, Manthorpe's statement stopped at this: "Smith said he had been called by someone close to the Premier's Office and told to be quiet". Didn't say that Smith reported a threat or warning, simply: "Somebody close to the Premier's Office had called and told him to be quiet".

Now that has to be compared with what Cronyn himself said that he told Smith, which was: "If you are going to give an interview, be factual and don't repeat hearsay". Now there has to be a question really put as to whether -- and Mr. Manthorpe, I might say, was very explicit about this. I asked him to go over it more than once and ~~he~~ was very incisive as to the exact words that Smith had ~~used~~ used.

Now, just stopping there, Mr. Smith, you are a member of the London Club you say and you lunch with people like Cronyn and Mr. Brown, etc., on a regular basis. You are on the board of directors of London Life and Mr. Cronyn is on your board of directors. There is a group in London that are very close friends and work together and do business together - is that ~~not~~ so?

Mr. Smith: I don't think I have ever had lunch with Mr. Cronyn.

Mr. Shibley: I see. But you are within that group are you not? You are within that group?

Mr. Smith: I guess I am in something ^{group}, I am not in a group with Mr. Cronyn; I don't associate with him ^{personally}.

Mr. Shibley: Well, Mr. Cronyn is a very dominant personality in London, is he not?

Sep. 10/73
3.05-3.10 pm
V.H.

Mr. Smith: I don't know. *I don't know what —*
milieu

Mr. Shibley: In the ~~milieu~~ of the circumstances of London where he's on your board of directors, you are both on the London Life board of directors, just getting a call from a person of Mr. Cronyn's stature would be a significant event, would it not? Getting a call in the context of saying, "There is a press investigation and if you are going to be interviewed, be factual and don't repeat hearsay,"?

Mr. Smith: I remember that phone call, yes.

Mr. Shibley: That would impress itself upon your mind, would it not?

Mr. Smith: Certainly. Certainly.

Mr. Shibley: And might you not translate whatever words he used to you ~~into~~ ^{into} a contractor's language to the effect that "I had better keep my mouth shut or I will never get any more government work,"?

Mr. Smith: No, I don't think so, no.

Mr. Shibley: I see. I just put it to you —

Mr. Smith: I got the call at night, and it was —

Mr. Shibley: — ~~and~~ ^{and} Mr. Renwick, ~~and~~ bearing in mind —

Mr. Smith: Mr. Cronyn's in — he's in Toronto about 90 per cent of the time. I very seldom see him, really.

Mr. Shibley: Well, you see — I could go through all this -- I am not going through all the excerpts from it but the point is, Mr. Smith, that it is not necessary for somebody to use words of threat as such for you to interpret what they're trying to communicate to you, and I put it to you, whatever Mr. Cronyn had said to you, you translated it in a meaning that you had better keep quiet.

Mr. Smith: No, I didn't translate it that way and I never mentioned that to anybody. I just said I could be getting a call from the Globe ~~and~~ about the Hydro building.

Mr. Shibley: In any event, Mr. Cronyn in your mind would be somebody close to the Premier's Office, would he not?

Sep 10/73
3.05-3.10 pm
V.H.

Mr. Smith: Certainly, he's the person I'd have in mind ~~that would~~ ^{if I had to} say that.

Mr. Shibley: Yes. So in terms of your language, he would fill that description as somebody ~~was~~ close to the Premier's Office.

Mr. Smith: Certainly.

Mr. Shibley: And in your mind, he was someone close to the Cabinet also, wasn't he?

Mr. Smith: Yes, in my mind.

Mr. Shibley: And in your mind, he was also a person high in the Progressive Conservative Party wasn't he?

Mr. Smith: I am not sure of that.

Mr. Shibley: But in your mind, he was?

Mr. Smith: That's a technicality. I would say close to the Cabinet, close -- I wouldn't consider him high in the party; ^{I didn't know} ~~although, I knew~~ he was in the party.

Mr. Shibley: All right. But in any event, the words become a matter of semantics.

Mr. Smith: Oh sure.

Mr. Shibley: When you used those words, you were referencing Mr. Cronyn, weren't you?

Mr. Smith: Certainly I was.

~~XXXXXX~~
Mr. Shibley: Yes.

Mr. Smith: I didn't deny that, Mr. Shibley.

Mr. Shibley: ~~And the only thing~~

H-2256 follows

Sept/10/73
3.10-3.15p.m.
B.A.

H-2256-1

~~Mr. Shibley:~~
~~those words you were referring to Mrs. Cronyn, weren't you?~~

~~Mr. Smith: Certainly, I was. I didn't deny that.~~

Shibley.

Mr. Shibley: And the only thing ~~left~~ left is, what were the precise words he used and what interpretation did you place on them, and was the interpretation that you communicated to Manthorpe and McAuliffe an accurate one?

Mr. Smith: Oh, no, no. Cronyn did not threaten me. If he had....

Mr. Shibley: I didn't say "threaten", I said, in the circumstances of your understanding from his conversation that the government was very upset, that the press were stirring things up. You did use that terminology, you knew about that?

Mr. Smith: Yes, I did.

Mr. Shibley: In the circumstances of the press stirring things up and the government being upset, a call from Mr. Cronyn against the background of your relationship in London, would be translated by you into meaning, "You had better keep quiet or you won't get government work".

Mr. Smith: Oh, that's a lot of crap. *Jesus!*

Mr. Brownlie: Mr. Chairman, in view of the fact that this has gone on for quite a while....

Mr. Smith: I don't mind. I am not going to say things that didn't happen ~~when~~ whether he wants me to or not.

Mr. Chairman: Mr. Brownlie.

Mr. Brownlie: IN view of the fact that this has gone on for quite a while, and one hon. member and the counsel has gone on with this for some length, I would like to observe, if I may, that it is interesting to me how people sitting around ~~the~~ table who, with respect, have obviously made up their minds with respect to a conclusion on this great question of threat, and so forth, looking for a particular thing will seek to find it, and will ignore

Sept.10/73
3.10-3.15p.m.
B.A.

(Mr. Brownlie)

anything which doesn't fit within that description. ~~There~~
I have in mind this comment and the last paragraph of the July 14
letter, referring to Mr. Barnicke. The only thing I have
seen in documentary evidence in this thing, which uses anything
like an expression which could be turned into a threat, which,
in other words, has to do with the expression, "You may lose
government business" is that paragraph, and yet, with great respect,
Mr. Renwick and Mr. Shibley have obviously cancelled that out of
their minds as having any significance ~~whatsoever~~ whatsoever, and yet,
it is the only documentary thing. I find this interesting. I
just wanted to observe that.

Mr. Chairman: Thank you, Mr. Brownlie. Mr. Hodgson,
you had a question.

Mr. Renwick: Mr. Chairman.

Mr. Chairman : Yes, Mr. Renwick.

Mr. Renwick: If I may just complete the remarks. I
am interested in Mr. Brownlie's observation. The reason I ruled
it out is that Mr. Barnicke is not a person.....

Mr. Brownlie: I understand that.

Mr. Renwick: ... close to the Premier's office, and
~~that~~ he is not a person high in the Progressive Conservative
party.

Mr. Brownlie: And that was certainly his evidence.

Mr. Renwick: And he is not a person close to the Ontario
Cabinet.

Mr. Brownlie: That was certainly his evidence.

But that wasn't my point. I understand what you have said very
clearly. My point was that having made up your mind that it had
to be Mr. Cronyn...

Mr. Renwick: No, just please do not tell me that I have
made up my mind.

Mr. Brownlie: Excuse, me, I apologise for that remark.
But it seems to me that when you go through this process of
~~elimination~~

Sept. 10/73
3.10-3.15p.m.
B.A.

(Mr. Brownlie)

elimination and you say, "Well, it can't be that ~~man~~^{man} the interesting thing to me is that in the process, the only words that have been used have apparently disappeared from importance in your mind and in Mr. Shibley's.

Mr. Renwick: Well, with great respect to Mr. Brownlie, let me say that what we are dealing with, when it all boils down to it, are two statements attributed to Mr. Smith, one by Mr. Manthorpe, one by Mr. McAuliffe. Mr. Barnicke does not fit the description of either, and Mr. Smith has not indicated to us, in this committee, that the person, if I may use that term, is a composite creature that he has created out of conversations that he had with Mr. Cronyn and with Mr. Barnicke and perhaps others. Now, if Mr. Smith wants to tell us that this is a composite figment of his imagination, fine.

Mr. Brownlie: What he has suggested, as I understand ~~the~~ the evidence, is that not he but ~~that~~ Mr. McAuliffe made that composite figure.

Mr. Renwick: Mr. Chairman, I am going to try ~~once~~^{once} more and then I think the record will have to speak for itself. I want to make the distinction perfectly clear that we are only talking about words, or similar words which have been used. We are not talking about the question of the interpretation placed on words. What may be a threat to one person is not a threat to another person. ~~Let me repeat quite distinctly Mr. Cronyn is a~~
~~Continued: Friend of~~

(Tape H-2257 follows)

H-2257-1

(Mr. Renwick)

~~It was said to another person.~~ Let me put it quite bluntly, Mr. Cronyn is a friend of yours, a fellow cottager, a member of the same board of the London Life company, a member of the board of your company, a person whom you look to for advice. Had he used those words in the precise connotation stated by Mr. McAuliffe they might well be subject to an interpretation that they were not threatening in that context. I have friends who might use very blunt words with me which, on their face, purported in other persons' minds to import a threat, but not in the circumstances in which they were made. It might be just blunt talk amongst friends.

Now what you have told us is that no one has used any blunt talk to you other than Mr. Barnicke's reference which Mr. Brownlie has referred to, and other than Mr. Cronyn's very careful and clipped statement that the press were to call you, you were to stick to the facts, and stay away from conjecture and hearsay. That is Mr. Cronyn's evidence. Now I take it then that you are telling the committee that no one, apart from Mr. Barnicke, ~~or~~ ^{and} apart from Mr. Cronyn, used any form of words which gave you hesitation in your determination over a period of time to bring this matter to public attention.

Mr. Smith: That is true.

Mr. Renwick: I have no further questions, Mr. Chairman.

Mr. W. Hodgson: I'll forego my question.

Mr. R.G. Hodgson: I would just like to ask one question, Mr. Smith. If I remember rightly you said you talked to Mr. Cronyn before you came here today, this past weekend. Was Mr. Brown upset?

Mr. Smith: Excuse me?

Mr. R.G. Hodgson: You were talking to Mr. Brown this past weekend?

Mr. Smith: Oh I thought you said Cronyn.

Mr. Chairman: You said Cronyn.

Mr. R.G. Hodgson: I'm sorry about that. Mr. Brown, was he upset that you were going to bring his name into this?

H-2257-2

Mr. Smith: No, ~~we~~ we just had a dinner, and I just said I was going down to ^{the} Hydro hearings again.

Mr. R.G. Hodgson: Did he know that any reference was going to be made to him?

Mr. Smith: No, he didn't know. He said, "I feel sorry for you, you poor son of a gun" or something like that.

No, those are not the words.

Mr. R.G. Hodgson: Maybe he should be feeling sorry for himself.

You didn't mention that to him? So he wasn't concerned. Did you go over the discussion of ~~the~~

Mr. Smith: I didn't. That was all that was mentioned.

Mr. R.G. Hodgson: Did you mention that you were going to be talking about ~~his~~ his call to Mr. Gathercole? at the luncheon?

Mr. Smith: No.

Mr. R.G. Hodgson: You didn't. Thank you.

Mr. Shibley: Mr. Smith, have you talked to Mr. Cronyn since I interviewed you on Friday?

Mr. Smith: No.

Mr. Shibley: Has anyone on your behalf spoken to Mr. Crony

Mr. Smith: Not that I know of. I have had no contact with him at all, whatsoever.

Mr. Brownlie: I haven't, if that is what you are getting at

Mr. Shibley: No, no, I wasn't concerned about you, Mr. Brownlie.

Mr. Smith: No, not at all.

Mr. Chairman: Any other questions.

Mr. Deans: Can I ask one question, flowing from an answer given to Mr. Renwick, and given to others, too, Mr. Smith, you said that the letter of April 14 was not to be considered by us as a request by you to Mr. Cronyn for assistance. That is paraphrasing.

Mr. Smith: That's right.

Mr. Deans: And that you wrote the letter to Mr. Cronyn because he is a director of your company.

Mr. Smith: Yes.

H-2257-3

Mr. Deans: Did you write to any other directors of your company?

Mr. Smith: No.

Mr. Henderson: Mr. Chairman, I am not clear. There was suggestion that you have a contract pending at the moment, Mr. Smith.

Mr. Smith: I am quite outspoken in my dealings with the Ontario government. I have never had any discrimination at all. I have done lots of work with them, and I have two contracts on the go.

Mr. Henderson: Maybe I misunderstood you a few minutes ago in your evidence that there is a contract standing that you think, or that I understood you to say that you had the opportunity to get. Did you not give that as evidence?

Mr. Smith: We have the contract. We just haven't signed it. We have started to work on it now.

Mr. Henderson: How big a contract is it, Mr. Smith?

Mr. Smith: It is just a couple of million - \$2 million, I think.

Mr. Renwick: Mr. Chairman, if I could just clear up one point, as I understand it, that was a call for public tenders and you won the .

H-2258-1 follows

(Mr. ~~Renwick~~)

~~Mr. Renwick: Mr. Chairman, if I could just clear up one point. As I said it, that was a call for public tenders and you won. . .~~

Mr. Smith: That's right.

Mr. Renwick: ~~-----~~ bid on the public tender, in accordance with the government rules respecting public tenders.

Mr. Smith: Yes. M

Mr. Chairman: Mr. Newman.

Mr. W. Newman: You do start contract ~~sign~~ building, before you ~~sign~~ the contracts, do you, quite often?

Mr. Smith: Oh, yes. Quite often.

Mr. Chairman: Any other questions?

Mr. Smith: ^{Or} A letter of intent, or, you know, a handshake a lot of times.

Mr. Chairman: That appears to be it for now, Mr. Smith.

Mr. Shibley: Mrs. Shuttleworth, please.

Mr. Henderson: What page is Mrs. Shuttleworth's former evidence, do you know?

Mr. Shibley: It is 789 - 2.

Mr. Chairman: Mrs. Shuttleworth, you have been sworn before. That oath is still in effect.

Mr. Shibley: Mrs. Shuttleworth, you have sat and heard Mr. Smith's outline of the discussions of June 28th that took place after we recessed at lunch time. Do you confirm what he said as to that discussion between Mr. Grant to you and you to him, as to the April 14 letter?

Mrs. Shuttleworth: Yes, I do.

Mr. Shibley: Had you earlier in the day, in the morning, during the recess of this committee, that morning on June 28, discussed the selfsame letter with Mr. Grant?

Mrs. Shuttleworth: No, not at that time.

Mr. Shibley: Did you discuss it at all during that recess that morning?

September 10th, 1973

3.20 - 3.25 pm

2258 - 2

AA

(Mrs. Shuttleworth)

Mrs. Shuttleworth: No, I did not.

Mr. Shibley: What was the first occasion that you discussed the April 14 letter upon?

Mrs. Shuttleworth: Mr. Grant had concluded his testimony. I believe Mr. Cronyn was up at that point. We were sitting in the gallery and he leaned over to me and said, "You know, I think there might be another letter."

Mr. Shibley: Yes.

Mrs. Shuttleworth: And I said, "Pardon?" And he repeated it and I said, "I think we had better go outside and discuss this." So we left while the committee was in session and he told me that in thinking about it, he recalled there might be this other letter and I said, "I don't know of any." And I said, "Does Don know about it?" And he said, "Well, I don't know."

Then when we recessed, which I think was the conclusion of the day, because you only sat in the morning, we were walking out . . .

Mr. Shibley: # You are still talking on the 28th?

Mrs. Shuttleworth: Yes.

Mr. Shibley: Because on that day you gave evidence, Dave Grant gave evidence and then John Cronyn gave some evidence, all in the morning in that order. Now, you are saying after Grant got off the stand is when he said to you he remembered another letter.

Mrs. Shuttleworth: ~~YES~~. Not immediately following, but at some point later on.

Mr. Shibley: Yes. Would you go on then please.

Mrs. Shuttleworth: We were walking down to lunch and I believe Mr. Smith and Mr. Brownlie were ahead. Dave and I were behind and I wanted to ask Mr. Smith if he was aware of such a letter. I called him back and asked John to go ahead, that I had something I wanted to discuss with him.

Mr. Shibley: Yes.

(Mrs. Shuttleworth)

Mrs. Shuttleworth: And I asked him at that time and he said he didn't know of any letter.

✓ Mr. Shibley: Yes.

Mrs. Shuttleworth: And then Dave ^{dropped} ~~asked~~ back, so that we could ask him what he thought about it.

✓ Mr. Shibley: And you left Mr. Brownlie on his own.

Mrs. Shuttleworth: Yes.

Mr. Shibley: All right.

Mrs. Shuttleworth: And Mr. Smith nor I could recall a letter, a further letter to Mr. Cronyn, and, of course, obviously not the contents. We agreed that we had better go home and look in the original file, not the one that we had been using throughout testimony here, which was a duplicate of yours, but the original file in the filing cabinet that had all the carbon copies to see if there was, in fact, such a letter.

Mr. Shibley: And that's when you located the April 14 letter.

Mrs. Shuttleworth: Yes.

Mr. Shibley: And did you ~~immediately~~ immediately recognize it as a letter which had not yet been produced to me?

Mrs. Shuttleworth: Well, it was not in the file we had been using, and ours was a duplicate of yours ~~letter~~, so we hadn't produced it.

Sept. 10/73
3:25 - 3:30 pm
C.B.

~~(Mrs. Shuttleworth)~~

~~... in the file ...~~
~~... had it produced it~~
Mr. Shibley: So that to be clear, Mrs. Shuttleworth, both Mr. Grant and yourself suspected at least that there was another letter which had not been produced to me as committee counsel.

Mrs. Shuttleworth: Mr. Grant thought there might be. I didn't know.

Mr. Shibley: ~~How~~ was it that that letter was not included in the document produced to me?

Mrs. Shuttleworth: I don't know. I had no part in the preparation of documents for you, Mr. Shibley.

Mr. Shibley: I see. Did Mr. Grant have anything to do with it?

Mrs. Shuttleworth: Yes, he did. He photocopied the documents on Mr. Smith's instructions.

Mr. Shibley: I see, and was the April and the July letter, were each of those letters within that file from which he made photocopies?

Mrs. Shuttleworth: No, in a sense that, when I say I had nothing to do with the preparation, I left on Mr. Smith's desk ^{the} Hydro file and the letter from the Personal and Confidential file.

Mr. Shibley: You left both of them?

Mrs. Shuttleworth: Yes.

Mr. Shibley: And the April 14 letter was in the Hydro file? ~

Mrs. Shuttleworth: That's right.

Mr. Shibley: That Mr. Grant used to take a photocopy for my purposes?

Sept. 10/73
3:25 - 3:30 pm

C.B.

Mrs. Shuttleworth: I don't know exactly know how he did it. Whether he photocopied everything and then examined it or the otherway around, I don't know.

Mr. Shibley: Now did you visit with Mr. Smith at the cottage on the Sunday of the long weekend of July 1?

Mrs. Shuttleworth: Yes, I did.

Mr. Shibley: Did you have conversation about the April 14, 1972 letter with him then?

Mrs. Shuttleworth: Yes, I did.

Mr. Shibley: And can you corroborate what Mr. Smith ~~said~~ says in terms of telling you that he was going to discuss that letter with John Cronyn.

Mrs. Shuttleworth: I believe on the Sunday when I spoke to him he had already spoken to Mr. Cronyn.

Mr. Shibley: He told you that.

Mrs. Shuttleworth: Yes.

Mr. Shibley: Did he have the duplicate copy of the April 14, 1972 ~~lx~~ letter with him on the 1st of July?

Mrs. Shuttleworth: Yes, he had the carbon copy.

Mr. Shibley: He took it up to the cottage?

Mrs. Shuttleworth: That's correct.

Mr. Shibley: And had he told you he was taking it up to the cottage so that ~~h~~ he might discuss it with John Cronyn at that time.

Mrs. Shuttleworth: I don't recall that he did.

Mr. Shibley: Did he say anything about having permitted John Cronyn to read the letter?

Mrs. Shuttleworth: He said that he had shown Mr. Cronyn the letter.

Mr. Shibley: On the 1st of July or prior to that time.¹

Mrs. Shuttleworth: Yes.

Sept. 10/73

3:25 - 3:30 pm

C.B.

Mr. Shibley: Mrs. Shuttleworth, I want ~~her~~.

Mr. R.G. Hodgson: Mr. Shibley I want to, before we leave the letter, if I could ask one simple question. Did you type this letter?

Mrs. Shuttleworth: Yes, I did.

Mr. R.G. Hodgson: Thank you.

Mr. Shibley: I want to refer you to the evidence at page 789 - 2. This was evidence of yours taken on June 27th.

" Mr. Shibley: Did you produce your firm's file respecting the Hydro submissions at that time?

"~~xxxx~~ Mrs. Shuttleworth: We had it in the office, yes.

"Mr. Shibley: And did you permit Mr. McAuliffe to examine it".

"Mrs. Shuttleworth: Near the end of the interview, yes.

"Mr. Shibley: So he had full access to the content of that file?"

Mr. Brownlie: Excuse me, I'm missing where you are reading from.

Mr. ^{RM, Chairman} ~~xxxx~~ 789 - 2 .

Mr. Brownlie: Excuse me, right near the top, eh?

Mr. Shibley: Yes, a quarter of the way down.

Mr. Brownlie: Thank you.

~~Mr. Shibley~~: "Mr. Shibley: So he had full access to the content of the file?

"Mrs. Shuttleworth: Viewing it, yes.

"Mr. Shibley: Did he ask for copies of any of the documents?

"Mrs. Shuttleworth: Yes, he did.

"Mr. Shibley: Which documents in particular?

"Mrs. Shuttleworth: He didn't outline any specific documents, but we told him we were not prepared to give him a copy of any of the documents.

Sept. 10/73

3:25 - 3:30 pm

C.B.

"Mr. Shibley: So in fact he was not given copies?

"Mrs. Shuttleworth: That is correct.

"Mr. Shibley: But he was permitted to view the whole of the content of the file?"

"Mr. Shibley: And within that file. Putting it another way, are you familiar with the productions that have now been made by Ellis-Don to me as counsel to this committee?

"Mr. Shuttleworth: By productions do you mean all the evidence that we have submitted?

"Mr. Shibley: Documents. Yes.

~~"Mr. Shuttleworth: Yes, I am.~~

~~"Mr. Shibley: Can you confirm that all documents which have ever existed....."~~

H 2251 to follow

Sep. 10/73
3.30-3.35 pm
V.H.

(Mr. Shibley)

✓ "Mrs. Shuttleworth: Yes, I am.

"Mr. Shibley: Can you confirm that all documents which have ever existed referable to Ellis-Don's involvement with the Hydro project have been produced to me?

"Mrs. Shuttleworth: Yes, I can."

And then 792-2, near the top of the page, you say:

"Mrs. Shuttleworth: No. He had made mention of the fact that various people would have proffered the advice that, you know, 'It is going to hurt you, Don, if you go ahead with this,' but never had he said that he had been threatened by someone in government that he would never get work and that he should stop pursuing it, never."

Then further down the page:

"Mr. Shibley: Exactly. Now then, as secretary to Mr. Smith, can we take it that you prepared the letter of July 14, 1972, from Mr. Smith to Mr. Cronyn, which is now exhibit 175?"

"Mrs. Shuttleworth: Yes.

"Mr. Shibley: You prepared that letter? Is that correct?

"Mrs. Shuttleworth: Yes, I did.

"Mr. Shibley: Now I gather also from what you have stated, that you are very much informed as to the day-to-day activities and communications of Mr. Smith. Is that correct?

"Mrs. Shuttleworth: Relatively speaking, yes.

"Mr. Shibley: In respect of this letter to Mr. Cronyn, can you assist the committee as to whether there had been any prior communications between Mr. Smith and Mr. Cronyn ~~was~~ referable ..."

Mr. Henderson: *What page Mr. Shibley?*
~~Seven ninety-two?~~

Mr. Shibley: Seven ninety-two dash three, at the very top.

"Mr. Shibley: In respect of this letter to Mr. Cronyn, can you assist the committee as to whether there had

Sep. 10/73
3.30-3.35 pm
V.H.

(Mr. Shibley)

been any prior communications between Mr. Smith and Mr. Cronyn referable to the Hydro contract?

"Mrs. Shuttleworth: By communications, are you meaning written?

"Mr. Shibley: Of any kind.

"Mrs. Shuttleworth: Prior to July 14th? I seem to think there had been but I can't bring the chronology into it."

Now, Mrs. Shuttleworth, you prepared this letter of April 14, 1972, you told Mr. Hodgson, is that correct?

Mrs. Shuttleworth: Yes, that's correct.

Mr. Shibley: And did you not have any recollection of it when I was asking you those questions?

Mrs. Shuttleworth: No, I didn't. As I say, when we refreshed our minds on the communications prior to speaking to this committee, we used a file. There were three duplicate files; one you had and one Mr. ~~Blair~~ ^{Graff} and Mr. Smith had. That was the file we looked at, thinking it was complete.

Mr. Shibley: On page 731 -- you thought it was complete? Is that correct?

Mrs. Shuttleworth: That is correct.

Mr. Shibley: Well, we will get back to that. I want to finish what you said earlier as to productions. At seven ninety-three, at the top:

"Mr. Shibley: With respect to the efforts of Ellis-Don to obtain the Hydro contract, was Mr. Cronyn sought out on a regular basis by Mr. Smith for advice?

"Mrs. Shuttleworth: I would say on a sporadic basis, Mr. Shibley.

"Mr. Shibley: Yes; and when you said 'sporadic,' how frequent would that be?

"Mrs. Shuttleworth: Well, I would say sporadic because my recollection of this particular letter, and you are talking about July 14, "there had been no communication with Mr. Cronyn for some length of time; for a fairly lengthy period of time."

Sep 10/73
3.30-3.35 pm
V.H.

Mrs. Shuttleworth: Yes, I don't think they had been talking ~~about~~ about it at all.

Mr. Shibley: I see. You didn't contemplate correspondence such as the April 14 letter when I asked you that question?

Mrs. Shuttleworth: No, because I felt, you know, fully secure that the ~~was~~ material we had in ~~hand~~ this file was it.

Mr. Shibley: Then at page 796-2 towards the bottom of the page, about two-thirds down:

"Mr. Shibley: In particular, did he discuss with you or in your presence the need to establish communication with certain people to bring about that result?

"Mrs. Shuttleworth: Yes, he felt he should see someone in Hydro and discuss our proposal further.

"Mr. Shibley: Did he say anything about discussing your proposal with anyone outside of Hydro but within government?

"Mrs. Shuttleworth: No.

"Mr. Shibley: Did he make any mention of the need to discuss the matter with persons politically connected?

"Mrs. Shuttleworth: No.

"Mr. Shibley: You know of the memorandum wherein he suggested that contact be established with Mr. Dillon?

"Mrs. Shuttleworth: Yes, that is correct.

"Mr. Shibley: And possibly there would be discussions with Mr. John White?

"Mrs. Shuttleworth: Yes, Mr. White would be available.

"Mr. Shibley: And you know of his written communication with Mr. Cronyn?

"Mrs. Shuttleworth: Mr. ~~John~~ Cronyn is a director.

~~XXXXXXXXXX~~

~~"Mr. Shibley: And you know of the communication . . ."~~

Sept.10/73
3.35-3.40p.m.
B.A.

H-2261-1

(Mr. Shibley)

~~Mrs. Shuttleworth: Mr. Cronyn is a (fellow)~~

" Mr. Shibley: And you know of the communication with Mr. Barnicke?

" Mrs. Shuttleworth: Yes.

" Mr. Shibley: And Mr. Jackson?

" Mrs. Shuttleworth: Yes.

" Mr. Shibley: Was there ~~was~~ ever any discussion in your presence directed to the effect that this group of men, or any one of them, might have on an assessment by Hydro of the Ellis-Don proposal?

" Mrs. Shuttleworth: I'm sorry, could you repeat that?

" Mr. Shibley: Was there ever any discussion in your presence as to the effect this group of men or any one of them might have regarding the evaluation of the Ellis-Don proposal by Hydro?

" Mrs. Shuttleworth: No, there was not.

" Mr. Shibley: Did you participate in establishing ~~a~~ communication with any of these people?

" Mrs. Shuttleworth: I may have placed certain calls to Mr. Candy. Mr. Smith did ~~try~~ and contact him and did, in fact, contact him on various occasions. I believe I would have placed that call that I have mentioned to Mr. Cronyn. I did not place any call to Mr. Jackson or to Mr. B^arnicke and I think that's all the people you are referring to.

" Mr. Shibley: Was there ever any ~~was~~ written communication ^{by} between your office and ~~that~~ that I mean anyone within Ellis-Don, and any other gentleman I have just listed to you?

" Mrs. Shuttleworth: Yes, there was this written communication with Mr. Cronyn.

" Mr. Shibley: ~~Other~~ Other than this docuemnt, was there every any?

" Mrs. Shuttleworth: We are not speaking of Hydro officials now?

H-2261-2

"Mr. Shibley: No, I am not talking about Hydro officials.

"Mrs. Shuttleworth: No, none of these people to my knowledge by anyone in our firm. "

~~XXXXXXXXXX~~

Mrs. Shuttleworth, how could you reconcile that series of questions and answers with the content of what is now the April 14, 1972 Exhibit 232?

Mrs. Shuttleworth: Because, in preparation for speaking to this committee, I have reviewed our Hydro file, which was the Hydro file, a duplicate of that which you had. I felt that was the complete file. There was nothing in there to Mr. Cronyn, and obviously ---

Mr. Shibley: Had you seen Exhibit 232 as at the time I was examining you on June 27th?

Mrs. Shuttleworth: I had obviously seen it when I typed it, but not since then.

Mr. Shibley: Yes. Had you seen it after you typed it, and before you gave ~~the~~ your evidence?

Mrs. Shuttleworth: It was always in the file but I do not recall specifically re-reading it, or searching it out for any purpose. I would say, no, not to look at it.

Mr. Shibley: You see, if you --- I will put it to you in these terms. You must have been of the view, if you were ~~aware~~ aware of this letter, when you gave answers such as ~~that~~ you did and such as I confronted Mr. Smith with, that there was never any request ^{of} ~~to~~ Mr. Cronyn to intercede on his behalf. You must have believed and known that I didn't have the letter of April 14 when you were giving those answers.

Mrs. Shuttleworth: No, I must not have. I was not aware of that letter when I was giving that testimony.

Mr. Shibley: I see. It never occurred to you. Did it ~~not~~ occur to you at the time that I didn't have the letter or else I would have been confronting you with it in terms of the responses that you were giving?

Sept. 10/73
3.35-3.40p.m.
B.A.

I don't know how
Mr. Brownlie: ~~Now, how could~~ she could be sure of
what you were going to confront her with, Mr. Shibley?

Mr. Shibley: Well, like answers to...

Mrs. Shuttleworth: Well, look at it this way. You could have had every chance of having it. It was in the Hydro file, McMuliffe saw it. For all I know ^{he} ~~she~~ could have taken it down verbatim and told you about it. IN fact, I still don't know how you knew about it. I mean, it's a possibility.

Mr. Shibley: Yes.

Mrs. Shuttleworth: If I thought for a minute that you knew about it, do you think I am going to keep it from you?

Mr. Shibley: You are back to the winks and nods and raised eyebrows sort of thing, Mrs. Shuttleworth. ~~Everybody~~

Brownlie: This committee
Mr. Chairman: ~~Everybody~~ has seen through that before.

Mrs. Shuttleworth: Your question was kind of strange too.

Mr. Shibley: Mrs. Shuttleworth, what I am wondering about is this. When I asked you questions about establishing contact with these people, you having prepared this letter for Mr. Smith, you having reviewed the file that you had regarding Hydro, did you not appreciate in the circumstances that you were safe in giving me these answers because I didn't have that letter?

Mrs. Shuttleworth: No.

Mr. Shibley: I see. Well, I would like to take you on,
~~on the~~

(Tape H-2262 follows)

September 10, 1973

3:40 - 3:45 p.m.

B.G.

(Mr. Shibley)

~~these answers because I didn't have that letter.~~~~Mrs. Shuttleworth: No.~~~~Mr. Shibley: I see. Well, would you like you on~~on this question of ~~798-1~~ 798-1, about half-way down,

"Were all the documents pertaining to the Hydro contract kept in one file? Mrs. Shuttleworth: Yes, they were." And then at the bottom of the page ~~you~~ say there is another file. ⁶⁶It's labelled 'personal and confidential.' I have a separate file for personal and confidential letters, and it was in that particular one. ⁷⁷We are talking about the July 14 letter. ⁶⁶Granted it does reference Hydro, but it's my practice to put personal and confidential letters in a separate file. Mr. Deans: There are no other personal and confidential letters pertaining to any matter ~~which~~ which might in any sense be considered to be part of this enquiry? Mrs. Shuttleworth: No, there are not. Mr. Deans: ~~There~~ There is nothing else."

Now, you remember Mr. Deans putting that to you?

Mrs. Shuttleworth: Yes, I do.

Mr. Shibley: And then again at page 800 -

Mrs. Shuttleworth: ~~And I might repeat that I'm not~~ ^{There are not.}

And we're not.

Mr. Shibley: Except the letter of April 14,

Mrs. Shuttleworth: It's not personal and confidential.

Mr. Brownlie: It is not marked "personal and confidential"

and she's described that, Mr. Shibley.

Mr. Shibley: Oh, I see.

Mrs. Shuttleworth: ~~It has always been kept in a Hydro~~ ^{It has always been kept in a Hydro}

file, I think I've said.

Mr. Shibley: So that I take it that your mental posture when this type of question is put to you, is that if there is any way that the questioning can be translated as not precisely requiring the production of an exact document, you're free to answer in the way you did.

~~Mrs. Shuttleworth~~ Mrs. Shuttleworth: ^{Answer} I ~~am~~ to the best of my knowledge and honesty, Mr. Shibley.

September 10, 197
3:40 - 3:45 p.m.
B.G.

Mr. Shibley: I understand.

Mrs. Shuttleworth: I was not trying to be evasive.

Mr. Shibley: Well, that's for the committee to decide upon, Mrs. Shuttleworth.

Mrs. Shuttleworth: That's fine.

Mr. Shibley: At page 800-1, at the bottom of the page, you said, "I'm sorry, ~~800-1~~ 800-2 is what I wanted; 800-2, the last half of the page: "Mr. Shibley: Yes, ^{and} in fact, his instructions to you on the occasion of that personal interview was to make full disclosure to ^{Mr.} McAuliffe. Mrs. Shuttleworth: Of our files and ^{OUT} information ^{to} you.

Mr. Shibley: ~~Mr.~~ Incidentally, with respect to your files, you have made reference to confidential files separate from the Hydro file. ^{Mr.}

Shuttleworth: Yes, it deals with varied matters. Mr. Shibley: Have you ~~examined~~ examined that particular file to ~~elicit~~ ^{it all} from ~~the~~ documents that it might contain which are relevant to any of the issues before ~~the~~ this committee? ^{Mr.} Shuttleworth: Yes, I have. ^{Mr.} Shibley:

And you are satisfied that the only document was the letter of July 14 which has now been produced. ^{Mrs.} Shuttleworth: Yes, I am. ^{??}

And then at page ~~804-2~~ 804-3.

Mrs. Shuttleworth: I think that's all; that's fine, isn't it?

Mr. Shibley: ~~Mr.~~ I don't think we need to deal with that. I want to go back and talk about some other aspects of your evidence. You do agree with ~~me~~ me, Mrs. Shuttleworth, that ⁱⁿ the postscript of this letter wherein Mr. Smith said to Mr. Cronyn, "I would appreciate it if you ^C would put in a good word with Darcy for me" and wherein he references talks with Colin Brown, he is attempting to use people to intercede for him.

Mrs. Shuttleworth: Those are your words, not his.

Mr. Shibley: I am asking you what interpretation you put on them.

Mrs. Shuttleworth: I interpret it as a list of people who ^{with} Colin Brown talked to somebody else who talked to somebody else, and the last part, "put in a good word ^{with} ~~for~~ Darcy", is the

H-2262-3

September 10, 1973

3:40 - 3:45 p.m.

B.G.

~~(Mrs. Shuttleworth)~~

(Mrs. Shuttleworth)

end of ^a ~~the~~ sentence, an afterthought, with no, you know, thought
beforehand that it is vital. You know, please put in ~~some~~ a word
with Darcy McKeough for me. I think it's an afterthought. After
all, most P.S.'s are that, and this is just that.

(Tape H-2263 follows)

H-2263-1

(Mrs. Shuttleworth).

~~Y. W. Hodgson: I don't think that.~~

Mr. W. Hodgson: Mrs. Shuttleworth, you wouldn't have considered, then, in view of this statement, that that could be considered trying to use political influence, or people of importance to get a contract?

Mrs. Shuttleworth: It could be considered as such.

Mr. W. Hodgson: But Mr. Smith wouldn't do that?

Mrs. Shuttleworth: And certainly if I was aware of it, or if Mr. Smith were aware of it, or Mr. Grant, during the course of these committee hearings, we would have brought it forward during that time.

Mr. W. Hodgson: But as of now it has been brought ~~forward~~ forward. If you were in our position, wouldn't you consider this trying to use political influence to gain a contract?

Mrs. Shuttleworth: I am not in your position, I can't speak for you.

Mr. W. Hodgson: I'm asking you the question.

Mrs. Shuttleworth: I know, but you are asking me to tell you what you think. I can't do that.

Mr. W. Hodgson: No, I'm asking you ^{what} ~~what~~ you think. Don't you think ~~that~~ this is in some way using political influence, or people in politics, ~~close~~ close to politics, to gain a contract?

Mrs. Shuttleworth: No, not to gain a contract. No.

Mr. W. Hodgson: Oh well, this is what he was after was a contract to build Ontario Hydro ~~but~~ building, and this is what he is writing about isn't it?

Mrs. Shuttleworth: Yes, that's right.

Brownlie:

Mr. ~~Shuttleworth~~: At a time, April 14, Mr. Chairman, when he was having all the difficulties he has described. Surely you have got to understand it in the context of April 14, not now.

Mr. W. Hodgson: He didn't have any more difficulty than any person else. This is one of his complaints that there was political influence used for the successful company.

Mr. Brownlie: Not in April.

Mr. W. Hodgson: Well at some time or other he has used

H-2263-2

(Mr. W. Hodgson)

this, ^{or} left this in people's minds, in the public's mind there was political influence. And then to write a letter like this, and then you say you don't think he was trying to use political influence?

Mrs. Shuttleworth: I'd have to say that.

Mr. W. Hodgson: Okay.

Mr. Shibley: I'd like to refer you to page 806-3. Mr. Bullbrook was examining, about half way down the page:

Mr. Brownlie: That is Thursday morning is it?

Mr. Shibley: June 29 in the morning. Right.

Mrs. Shuttleworth: Go ahead.

Mr. Shibley: Are you there?

Mrs. Shuttleworth: Yes.

Mr. Shibley:

"Mr. Bullbrook: Did Mr. Smith every convey to you a thought that it might be advantageous for him to undertake some influence on behalf of Ellis-Don?

"Mrs. Shuttleworth: No.

"Mr. Bullbrook: He didn't.

"Mrs. Shuttleworth: No, he would have contacted people who could give him advice so that he could react. He does things on his own as often as he can. He doesn't let other people do them for him. That's his manner of business.

"Mr. Bullbrook: Did he ever discuss with you the possibility of communicating with Mr. White?

"Mrs. Shuttleworth: He mentioned it in a memo, very briefly, before he left for Hawaii. To the best of my knowledge he never did, in fact, contact Mr. White, nor did anyone in our firm."

Then again, at 810-1; Mr. ^{W. Hodgson} ~~Hodgson~~ was asking you questions, about a third of the way down.

"Mr. W. Hodgson: During your testimony to the questioning of Mr. Bullbrook, you made the statement that Mr. Smith didn't use political influence to obtain his contracts, he made it on his own. Wouldn't you say by going to Mr. Jackson that -- we know what Mr.

Jackson's position was and he went to Mr. Barnicke and Mr. Cronyn, ^{also} ~~also~~ to get advice and see what they could do for him, wouldn't you

H-2263-3

(Mr. Shibley)

say that he had done a little bit of politicking?

"Mrs. Shuttleworth: Ah, to get advice, but not to see what they could do for him. To get advice as to how he could proceed.

"Mr. W. Hodgson: He went to Mr. Jackson definitely to open a door for him to get to the chairman of Hydro.

"Mrs. Shuttleworth: Yes, but you notice he didn't ask Mr. Jackson to present his case to Mr. Gathercole."

"Mrs. Shuttleworth, in this letter of April 14, Mr. Smith was asking Mr. Cronyn to "put in a good word with Darcy for me". That amounts to presenting his case. Now, how could you make answers such as you have in terms of supporting the posture that Mr. Smith never looked to any political figure to intercede on his behalf with knowledge of what was in the April 14 letter?

Mrs. Shuttleworth: I think it would confirm my opinion that it wasn't a request for political influence. If it were, if I considered it as such of any import, it would have stuck in my mind.

H-2264-1 follows

September 10th, 1973

3.50 - 3.55 pm

2264 - 1

AA

(MRS. Shuttleworth)

~~As far as for political influence. If I were if I considered it as such, it would not have stuck in my mind.~~

Obviously, it didn't. Therefore, I could speak the way I did.

Mr. Shibley: You are sticking by your reading of this postscript that it doesn't read as though he is seeking ~~an~~ interception ____

Mrs. Shuttleworth: If ~~you~~ wanted to examine it minutely, yes, you can get that impression. But it was not my impression.

Mr. Shibley: Well, I don't need to examine it minutely, Mrs. Shuttleworth. I put this question to you. The postscript reeks of an attempt on his part to communicate with political figures in connection with this contract.

Mrs. Shuttleworth: There is only one political figure mentioned and ____

Mr. Shibley: Mr. Colin Brown is not a political figure?

Mrs. Shuttleworth: Well, no he is not. He is involved in his presentation against the ~~Liberal~~ ^{Liberal} Party all the time, but I don't know what influence he, in fact, has with the Conservatives. Just because you are one doesn't mean you are strongly the other.

Mr. Shibley: Mrs. Shuttleworth, Mr. Smith has said that on the first of July, having discussed it with Mr. Cronyn, and having told Mr. Cronyn that he wasn't going to produce the letter, Mr. Cronyn agreed with that decision, ~~where~~ were you made aware that that was the decision?

Mrs. Shuttleworth: Yes, I was.

Mr. Shibley: When were you made aware of that fact?

Mrs. Shuttleworth: Sunday afternoon.

Mr. Shibley: The same day, July 1. Is that correct?

Mrs. Shuttleworth: That's correct.

Mr. Shibley: So that when you resumed giving your own testimony on July 10, that continued to be the decision of Mr. Cronyn and Mr. Smith and you were going along with it as of that day.

September 10th, 1973

3.50 - 3.55 pm

2264 - 2

AA

(Mrs. Shuttleworth)

Mrs. Shuttleworth: I was aware of that letter, yes.

Mr. Shibley: I see. And on that occasion, I must say thinking I asked you at page 1138 - 2 _____.

Mrs. Shuttleworth: I don't have that.

Mr. Shibley: Would you please give ~~me~~ it to her?

Mr. Shibley: About one-third of the way down^{you}, I had recalled ~~to~~ to re-examine you on other things and having previously asked you about the production of all documents, as I have outlined to you, I said; "While I have you here, Mrs. Shuttleworth, did your office receive any communication of any nature whatsoever from any source, or a copy of any correspondence as between any other two people referable to the head office building, ~~the~~ other than what has already been produced to this committee?"

Answer: "No, we did not."

Now, I realize, Mrs. Shuttleworth, that that question contained the word "receive." Did you not feel, however, that the question required you in the context of ~~having~~ having been asked repeatedly about all productions, from the Ellis-Don file, on previous occasions, you now being fixed with a very precise knowledge, as at July ~~one~~, that this was one document that had not been produced to this committee, and you being fixed with an awareness of an agreement between Mr. Cronyn and Mr. Smith that it would not be produced, did you not consider that you had an obligation on the occasion of the resumption of your testimony on July 10, 1973, to tell this committee of the existence of that letter?

Mrs. Shuttleworth: ~~If~~ I had been questioned about the existence of that letter, I would have answered it, Mr. Shibley.

Mr. Shibley: So that unless I am able as a magician to say to you, as I ultimately said to Mr. Smith, "Was there another letter sent by you in April of 1972?" you didn't

September 10th, 1973

3.50 - 3.55 pm

2264 - 3

AA

(Mr. Shibley)

feel any obligation to come forward with the whole truth as to the production of documents. Is that what you are telling this committee?

Mrs. Shuttleworth: No, I did not choose to volunteer it.

Mr. Shibley: And this, notwithstanding that you had been asked by me in about six different ways, on your prior attendances, as to whether I had all ~~the documents you knew having secured~~
~~the~~

2265 - 3 1 follows

(Mr. Shibley)

~~on your paper. I understand that you had the documents and you having assured this committee that we did have all the documents.~~

Mrs. Shuttleworth: Yes, and I was certain that you did at that time.

Mr. Shibley: Now, Mrs. Shuttleworth, there is nothing in the withholding of these documents that benefits Mr. Smith or Ellis-Don is there?

Mrs. Shuttleworth: No, there is not.

Mr. Shibley: The whole purpose of the withholding of these documents is to avoid embarrassment and protect Mr. Cronyn?

Mrs. Shuttleworth: I would say that is not correct.

Mr. Shibley: Why isn't it correct?

Mrs. Shuttleworth: I would ~~say~~ say that there were two reasons ^{and} now I am speaking for Mr Smith which perhaps I shouldn't. One, that at the beginning of the inquiry, in a rather confused state of business affairs ~~on the return of~~ on his return from Europe, he would have looked at those and seen that they did not deal with the connection between Mr. Moog and Mr. Davis, did not deal specifically with his proposal, ^{and} he may have felt that their relevance was not great. Secondly, to avoid embarrassment to Mr. Cronyn, ~~as~~ that is not to say protect Mr. Cronyn. But those two concerns would have, were made in his ^{mind} ~~head~~ in a very short period of time. It is not as if he sat down and considered at great length ^{why} he was making that decision. He made a decision quickly, ^{it} was made and there it was, and obviously you had to carry on accordingly.

Mr. Shibley: Regardless of your oath?

Mr. Brownlie: Now, I object to that. You are translating ~~very~~

Mr. Shibley: I'll withdraw the question. Let's go on. You say you had to carry on accordingly. I put this series of propositions to you, Mrs. Shuttleworth, among them

Sep 10/73
3:55-4:00 pm
V.H.

(Mrs. Shibley)

isn't one that you might think would come to mind. But the first is, that it was very basic to Mr. Cronyn's evidence, Mr. Smith's evidence and your own evidence that never had Mr. Smith asked Mr. Cronyn to intercede for him. Do you agree with that?

Mrs. Shuttleworth: I would say yes, I can't recall all his testimony, but yes.

Mr. Shibley: And basic to the evidence of Mr. Cronyn and Mr. Smith and yourself, was that Mr. Cronyn had no communication with anyone respecting the Hydro head office building until it became a public issue after the tabling of the Nixon's questions?

Mrs. Shuttleworth: That is correct.

Mr. Shibley: And that this basic posture by Mr. Cronyn that he had never interceded nor been asked to intercede and had no communications until after December 1 required the three of you to testify ~~was~~ ^{I am sorry,} required the three of you to first of all ~~to~~ withhold the production of the two letters of April 14 and July 14 and required the three of you to tell this committee evidence as to the sequence of events referable to the communication with Manthorpe that was inconsistent with what Mr. Manthorpe had said.

Mr. Brownlie: Mr. Shibley, you yourself gave evidence, first thing this morning ~~to~~ ^{the effect} ~~and~~

Mr. Shibley: Gave evidence?

Mr. Brownlie: Yes. Gave evidence first thing this morning, not under oath, that you had spoken to Mr. Darcy McKeough, the only person I understand that Mr. Cronyn might possibly have interceded with but he did not intercede with and now you are ^{to} putting this witness the suggestion that it was otherwise.

Mr. Shibley: Mr. Brownlie, I never said that Mr. McKeough was the only person respecting whom Mr. Cronyn might act as an intermediary or intercede for Smith with.

Mr. Brownlie: ~~impossible~~ ^{That's what we were talking about all morning.}

Mr. Shibley: Mr. Cronyn, I think it is a matter of record had a position which went beyond that. I won't get into
) H-2266 follows

Sept. 10/73

4 - 4:05 pm

.C.B.

(Mr. Shibley)

~~that Mr. Cronyn, I think is a matter of record, and a position which went beyond that, I cannot get into it now. But I want to go down the line with this witness on this point: That once Mr. Cronyn adopted the posture that he was not in communication with anyone until after December 1, it became essential to contradict Mr. Manthorpe who was saying that as at November~~

Mrs. Shuttleworth: I gave testimony before Mr. Cronyn.

Mr. Shibley: Yes.

Mrs. Shuttleworth: I told you my recollection of that event and Mr. Smith's comments, i.e., "I wonder what John would have said if he knew I'd already called the ~~Globe~~ Globe". I will repeat that.

Mr. Shibley: Yes, I know you gave that on the second round of your testimony and, incidentally, it was not volunteered until the second occasion on July 10.

Mrs. Shuttleworth: Could you check that ~~me~~ please?

Mr. Shibley: That's right, isn't it. You never volunteered that as an explanation to this committee for challenging the chronology established by Mr. Manthorpe until after the July 1 ~~was~~

Mr. Walker: Well, she just asked for it to be checked, and I ~~it~~ in all ~~fairness~~ ^{fairness}.

Mr. Shibley: Mr. Bell is doing it. At page 1143-1.

Mrs. Shuttleworth: Well, there goes to show you if you - I have no knowledge when I said that.

Mr. Shibley: Yes, this was on July 10, 1143 - 1.

"Mrs. Shuttleworth: Mr. Smith made the comment: I wonder how Mr. Cronyn would react if he knew I had already been in touch with the Globe. Therefore, chronologically speaking, I ~~may~~ have to conclude the calls from the Globe were previous to the call from Mr. Cronyn, but I cannot give you ^{date} ~~date~~."

Sept. 10/73

4 - 4:05 pm

C.B.

{Mr. Shibley}: ~~So that~~

~~xxxxxx~~ it was not until Mrs. Shuttleworth what I'm

trying to. ~~xxxx~~

Mrs. Shuttleworth: Look, if you ^{are} asked enough questions enough things do come back into your mind. ~~if~~ This may have been in my mind previously, but I didn't say it.

Mr. Shibley: It ~~wasn't~~ was a further effort on your part to advance the position of ~~being~~

Mrs. Shuttleworth: No, it was not Mr. Shibley.

Mr. Shibley: ~~xxxx~~ Mr. Cronyn ~~as~~ in the same light as withholding the April 14 letter.

Mrs. Shuttleworth: No, sir.

Mr. Shibley: I see. Now then were you in London on the weekend of June 23, 24 and also ~~xxx~~ on the Friday and Monday, circumscribing that weekend.

Mr. Shuttleworth: I imagine I was, I'm just not sure what I did on the weekend.

Mr. Shibley: Did you participate in or have you any knowledge or information of any activity among persons in London on that weekend referable to the Hydro head office building?

Mrs. Shuttleworth: The only knowledge I have is, ^{ab} Mr. Grant, Mr. Smith and I discussing the letter that we subsequently showed to our counsel who immediately called you.

Mr. Shibley: Were there any discussions among any of the three of you and Mr. Cronyn on that weekend?

Mrs. Shuttleworth: No, not to my knowledge.

Mr. Shibley: Or anyone else.

Mrs. Shuttleworth: To my knowledge, there were no discussions, only between the three of us.

Mr. Shibley: And with respect to the long weekend, that's the same ~~weekend~~ weekend of July 1 when you were up at the cottage; other than the discussions between you, Smith, Cronyn, was anyone else involved in discussions with you, to your knowledge or information regarding the Hydro head office building?

Sept. 10/73

4 - 4:05 pm
C.B.

Mrs. Shuttleworth: Concerning that particular letter, only Mr. Smith and I. In the course of the evening's conversation I would ^{say} a few guests commented on it, but as friends do. They didn't have any knowledge other than the papers, and it was a light exchange.

Mr. Shibley: What guests are you talking about?

Mrs. Shuttleworth: ~~Wxxxx~~ Well, there were people visiting Mr. Smith. ~~My~~ husband was there, his daughter and son-in-law. Sure Hydro came up; you can't.

Mr. Shibley: Was that letter discussed among them?

Mrs. Shuttleworth: No, as I said, concerning this letter, on Mr. Smith and I discussed it, and to my knowledge of the people there, we were the only ones who knew of it.

Mr. Shibley: And you did not then, nor have you had before or since ~~any discussion with anyone since~~

~~the new production of the letter~~

H 2267 to follow

H-2267-1

(Mr. Shibley)

any discussion with anyone else referable to the non-production of this letter, or referable to the letter? I find I have to be very careful about the words I use.

Mrs. Shuttleworth: Mr. Grant.

Mr. Shibley: Yes. Anyone else?

Mrs. Shuttleworth: I can't think of anyone else, no. who is our vice-president, I am considering Mr. Bayley, but I haven't had any discussions with him. Whether Mr. Smith has, I don't know.

Mr. Shibley: I am going to make my question as broad as I can, Mrs. Shuttleworth. Have you discussed the letter of April 14, 1972, with anyone between the time — between April 30th, and to date, as to the circumstance of its production to this committee?

Mrs. Shuttleworth: No, I have not.

Mr. Shibley: Have you discussed its content with anyone in that period of time?

Mrs. Shuttleworth: It would take you back before April 30th. If it was in the file well, it was in the file if Mr. McAuliffe saw it, he may have made some comment.

Mr. Shibley: Aside from him.

Mrs. Shuttleworth: No.

Mr. Shibley: When the letter of July 14 was produced, or of April 14, you were aware of the existence of this letter as well.

Mrs. Shuttleworth: No.

Mr. Shibley: Are there any other documents?

Mrs. Shuttleworth: The only documents outstanding are documents relating to financial matters that you have asked us to keep until Mr. Grant gives his testimony on Moog's profits.

Mr. Shibley: Do you know of any, or have you any information as to any discussion that Mr. Cronyn had with anyone referable to the April 14, 1972, letter?

Mrs. Shuttleworth: Only with Mr. Smith, the weekend of July 1.

Mr. Shibley: You know of no other conversations between

Sept. 10/73
9.05-4.10p.m.
B.A.

(Mr. Shibley)

Mr. Cronyn and anyone else; you have no information as to that?

Mrs. Shuttleworth: No, I don't.

Mr. Shibley: With respect to Mr. Smith, do you have any knowledge or any information of any discussion he has had with anyone other than Mr. Cronyn regarding that letter?

Mrs. Shuttleworth: No, only Mr. Grant, as I have said. And our counsel.

Mr. Shibley: Incidentally, your counsel did ~~not~~ not know about ~~the~~ that letter until Tuesday, July 3rd.

Mrs. Shuttleworth: That is correct.

Mr. Shibley: Were you in on the approach by the Globe and Mail reporter?

Mrs. Shuttleworth: I wasn't here that day, Mr. Shibley.

Mr. Shibley: I see.

Mr. Finlayson: Mr. Chairman, the question that ~~in~~ ~~the~~ response to the question that Mr. Shibley asked, I thought the witness said that Mr. Grant had some figures that he was going to testify about with respect to Moog's profit. Now, was that an error on the witness's part?

Mr. Chairman: I think that is what she said.

Mr. Shibley: I don't really know whether I am going to pursue that at all. There was a time when we thought we would be interested in those figures, but ~~....~~

Mr. Finlayson: You mean, Mr. Grant's theories as to that Moog was making

Mr. Shibley: Apparently, he ran some computer

it.

don't know what it has got to —

but certainly if we do, I

I'd like to see those figures in advance, because you are still going to call Mr. Coles, ~~and~~ as I understand it. I don't know why you want to go into Mr. Grant's speculations on this subject, but if you do, I think, in fairness, I ought to see them — the figures.

Sept. 10/73
4.05-4.10 p.m.
B.A.

Mr. Genest: I would like to ask for the same
privilege, Mr. Chairman.

Both

Mr. Chairman: ~~Maybe~~ requests seem reasonable to me.

~~Sure.~~
Mr. Shibley: You said in your previous testimony, at

792

~~792~~-2, Mrs. Shuttleworth, that various people proffered ~~my~~ advice,

"It is going to hurt you, Don, if you go ahead with this";

792-2. At the top of the page. "~~She~~ ^{He had} made mention of the fact that

various people ^{would} ~~that~~ have proffered the advice that, you know, ^{it} ~~it~~

is going to hurt you, Don, if you go ahead with this?" Who were the

various people to whom you were referend~~ing~~ at that time?

~~Mrs. Shuttleworth: I don't know if you asked me then,~~

~~but I will say again now. I had to see~~

(Tape H-2268 follows)

H-2268-1

Mrs. Shuttleworth: I don't know if you asked me then, but I will say again now, I had no one specific in mind, and still can't think of any specific person. It could be other directors, it could be his ~~vice~~-president, and it could be anyone.

Mr. Shibley: I have no further questions, Mr. Chairman.

Mr. Chairman: Mr. Deans.

Mr. Deans: Mrs. Shuttleworth, ~~on~~ on the two previous occasions that you were here you certainly impressed the committee with your competence in the way in which you dealt directly with the questions. In fact, it was even a comment in the newspaper, I think, if I recall correctly.

You were asked by Mr. Shibley on those occasions if there were any other documents. You were asked today by Mr. Shibley if there were any other documents, and you've said "no", other than the financial documents that we at this point don't intend to see. How do you know?

Mrs. Shuttleworth: Because by this point in time we have, I have, examined all the original files. I have not left it to just reviewing what I thought was the complete document, i.e., the photocopy duplicate file that we kept with us during our testimony.

Mr. Deans: I think you can appreciate, Mrs. Shuttleworth, the difficulty that we have. We accepted at face value what you said the last time and you became aware of the presence of another document which, whether or not you thought it important, obviously was related directly to the ~~investigation~~ inquiry's terms of reference.

Mrs. Shuttleworth: I didn't make any value judgment on it.

Mr. Deans: No, I'm saying whether you did or not, I'm not aware of whether you thought it was important. And you were aware on the occasion of your first visit to the committee, that the committee wanted produced, in fact was empowered to require that there be produced before the committee, all documents with any relevance of any kind to the hearing before it.

Mrs. Shuttleworth: Yes.

Mr. Deans: I can understand if you weren't aware of the documents being there, or this particular document being there, then

(Mr. Deans)

you obviously could hardly produce it, but I cannot understand how you could appear before the committee some ten or twelve days later, secure in the knowledge that there was such a document, and recognizing that you had been asked previously for all of the documentation, and having given a positive answer that there was no other, and that you ^{would} ~~had~~ failed to offer that there was to your knowledge another document subsequent to the question that had been asked and related to the question that had been asked, ~~and~~ I ask you seriously, have you told us everything that you know about the dealings between Mr. Smith and any other persons related to the inquiry that we are presently conducting, whether the question has been asked directly of you or not?

Mrs. Shuttleworth: Yes, I have Mr. Deans.

Mr. Shibley: And whether or not the document presently exists or has since been destroyed?

Mrs. Shuttleworth: There have been ~~no~~ documents destroyed.

Mr. Deans: Okay.

Mr. Chairman: Any other questions? Mr. Renwick.

Mr. Renwick: Mrs. Shuttleworth, do you know of any acknowledgement, or reply, or communication that was forthcoming from Mr. Cronyn as a result of the April 14 letter to him?

Mrs. Shuttleworth: No, I do not know of any.

Mr. Renwick: Was there any follow-up made to him about a reply, or was there any comment about the failure to get a reply made?

^{I have}
Mrs. Shuttleworth: ~~No~~ knowledge of any follow up. Yes, I am sure there was a comment concerning the fact that Mr. Cronyn did not reply to the letter, but not in any specific area of the letter.

Mr. Renwick: I have no further questions, Mr. Chairman.

Mr. Chairman: That is all for now, Mrs. Shuttleworth.

Mrs. Shuttleworth: Thank you.

Mr. Chairman: We will recess until 4:30 p.m.

The committee recessed at 4:15 pm.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order.

Mr. Shibley: Mr. Grant please.

Mr Chairman: I have one or two comments I want to make just before we proceed with Mr. Grant. Neither Mr. Gaunt nor Mr. Bullbrook have been with us today? Mr. Gaunt's first message was that he would be with us this afternoon, that he was ill this morning, but his health did not permit him to continue on, so he is away ill. I have just received a ^{note} ~~not~~ from Mr. Bullbrook's secretary and that Mr. Bulbrook expected to be with us this afternoon but that he has a flat tire on the 401 and will be here in about half an hour. I can't think of ~~me~~ a flat tire that could happen to a nicer guy?

Mr. Renwick: We could send a transcript out and he could read it?

Mr. Chairman: In fairness to both Mr. Gaunt and Mr. Bullbrook, that's where they both are.

Mr. Shibley: Mr. Grant, I am not going to go through all the detail of the events of June 28. You have heard the ~~me~~ evidence of both Mr. Smith and Mrs. Shuttleworth as to the circumstances of that day when at the noon recess, when we actually rose for the day, there was discussion apparently between you and ~~me~~ ^{her} and thereafter between you, ~~me~~ ^{her} and Mr. Smith respecting the April 14, 1972 letter.

Mr. Grant: Yes.

Mr. Shibley: Do you confirm what they have said as to the circumstances of those discussions on June 28?

Mr. Grant: Yes. It was just prior to the conclusion of Mr. Cronyn's testimony.

Mr. Shibley: Now, you had already concluded your testimony at the time that these conversations took place, is that correct?

Mr. Grant: Yes.

Mr. Shibley: You were a witness that morning immediately prior to Mr. Cronyn, I believe?

Mr. Grant: Yes.

September 10th, 1973

2270 - 1 4.35 - 4.40 pm
AA

Mr. Shibley: *And on the occasion*

of giving your evidence, I asked you on page 812 - 2 ---
can the witness have the transcript, 812-2, June 28th? ---
this page of evidence was taken at 10.45, the tape was
taken at 10.45 to 10.50, so that we can fix this with
precision the time. You notice I asked you, Mr. Grant,
about a third of the way down, "You have reviewed in
preparation ^{for} these hearings, the whole of the documentation
in the files of Ellis-Don."

Mr. Grant: Yes I have.

Mr. Shibley: And in particular, you have considered
the relevancy of all such documents.

Mr. Grant: Yes.

Mr. Shibley: You know the documents that have been
produced to me as counsel to this committee?

Mr. Grant: Yes, I do.

Mr. Shibley: And otherwise than the computer run-
offs that I believe have been produced to someone else, on
my instructions, is it your sworn testimony that all documents
in the possession of Ellis-Don, from whatever file, have been
produced to me?

Mr. Grant: Yes sir.

Mr. Shibley: All documents that are relevant to any
issue in these proceedings.

Mr. Grant: Yes sir.

Mr. Shibley: And you understand what those issues are.

Mr. Grant: Yes/sir?

Mr. Shibley: Now, Mr. Grant, it appears that within a
very short time, following the giving of that evidence, literally
within a matter of a few hours . . .

Mr. Grant: Yes.

Mr. Shibley: You were raising with Mrs. Shuttleworth and
Mr. Smith the existence of exhibit 232, April 14 letter, and
the fact that it had not been produced to me. Is that correct?

(Mr. Grant)

Mr. Grant: That is correct.

Mr. Shibley: Now then . . .

Mr. Grant: I suggested the possibility that it mightn't have.

Mr. Shibley: How were you aware at that time of the fact that this was a document not yet produced to me?

Mr. Grant: I really can't explain what specifically it was that just sort of clicked in my mind and I immediately talked to Anne about it.

Mr. Shibley: You knew then that it had not been produced to me. Is that right?

Mr. Grant: Yes. Well, I shouldn't say that I knew it. I suspect ^{ed} that that ^{was a} letter that had not been produced.

Mr. Shibley: Now, what made you suspect that this document had not been produced?

Mr. Grant: Well, we had just gone through that week, I believe, of the testimony surrounding the July 14th letter.

Mr. Shibley: YES.

Mr. Grant: And it just clicked in my mind that there were two letters that I had seen in the file directed to Mr. Cronyn.

Mr. Shibley: And there has been evidence that you had something to do with making up the file of documents that was produced to me.

Mr. Grant: That's correct.

Mr. Shibley: And you had seen both those letters at that time?

Mr. Grant: Yes.

Mr. Shibley: And were you responsible in part ~~or~~ ^{at} all for the deletion of those two letters from the file?

Mr. Grant: I was in attendance with Mr. Smith when we went through the ~~documents~~ documents that were put

September 10th, 1973

4.35 - 4.40 p_m

2270 - 3

AA

(Mr. Grant)

together for your file.

Mr. Shibley: Yes. And you—I want to ask you very specifically—you knew then that those two letters were not being produced to me.

Mr. Grant: Yes.

Mr. Shibley: Did you discuss the two letters with Mr. Smith at the time that decision was taken?

Mr. Grant: No, I did not.

Mr. Shibley: Did you discuss with him as to the reason why they would not be produced to me?

Mr. Grant: No, I did not.

Mr. Shibley: You mean it just happened spontaneously?

Mr. Grant: You must recall, Mr. Shibley, that I had only been with Ellis-Don for something like 4-1/2 months at that particular stage. I had no in-depth knowledge of what had transpired during 1972 relevant to the Hydro proposal.

Mr. Shibley: Well, Mr. Smith, regardless of how—Mr. Grant, regardless of the shortness of time, you were alert to the content of the two letters, ~~wer~~ were you?

Mr. Grant: Only, with—as I said in my testimony, I had gone through the file. I had quickly glanced through each letter. They had references to the Hydro project or someone connected with Hydro in each and every case. So I photo~~graph~~ copied each and every one of them.

Mr. Shibley: Were these among the ones you photo-copied initially?

Mr. Grant: Oh, yes.

MR. Shibley: They were?

MR. Grant: Yes. Well, the particular ones

2271 - 1 follows

September 10, 197
4:40 - 4:45 p.m.
B.G.

H-2271-1

~~Mr. Grant:~~

~~... and the ones you passed to Mr. Smith?~~

~~Mr. Grant:~~

~~Mr. Smith:~~

Mr. Grant: Yes.

Mr. Shibley: And then, -

Mr. Grant: Well, this particular one was -

Mr. Shibley: Yes.

Mr. Grant: I seem to believe that I did copy the other
one ~~over~~ too.

Mr. Shibley: Yes; and then having photocopied^d them,
was it on Mr. Smith's express direction then that those photocopies
were not included in the brief of documents submitted to me?

Mr. Grant: Yes, not ~~quite~~^{on} his express direction. He just
as we went through the file, he said "Fine;" we read through each
document, "Fine;" and "that's not relevant," and so on. We kept the
financial calculations out. I am not specifically positive about
a letter from our^r auditors in relation to our financial calculations
but it was definitely in relation to them.

Mr. Shibley: And so that you and Mr. Smith, on some
occasion, as you were preparing the brief for me -

Mr. Grant: Yes.

Mr. Shibley: -- went through each document, and when you
ran into each of the letters of April 14 and July 14, he just
removed them.

Mr. Grant: Yes.

Mr. Shibley: Did he say anything to you respecting the
effect~~that~~ that publication of these ~~letters~~ letters might have upon
Mr. Cronyn?

Mr. Grant: No, ^{he said} just as we passed through them, "That's
really not relevant."

Mr. Shibley: At any time, right up to the present moment

September 10, 1973
4:40 - 4:45 p.m.
B.G.

(Mr. Shibley)

have you ever discussed with Mr. Smith the effect that the production and publication of these letters might have on Mr. Cronyn?

probably
Mr. Grant: I think ~~probably~~ only the July 14th letter, in which he commented on ~~that~~ that John was made ~~at~~ at him then because — they had ~~discussed~~ discussed before that his name had to come light into testimony. And now, this letter had come to ~~light~~, the July 14th letter, and it only created more embarrassment.

Mr. Shibley: Yes; well then, were you in London on the weekend of June 23 and 24 and on the Friday and Monday circumscribing that weekend?

Mr. Grant: I was in on the Friday morning and Monday.

Mr. Shibley: Yes; did you participate in any activity respecting the review of the documents in the files?

Mr. Grant: No.

Mr. Shibley: Pardon?

Mr. Grant: ~~No~~ No.

Mr. Shibley: Did you have anything to do with the decision to produce the July 14 letter?

Mr. Grant: I was present at the time that it was brought to light.

Mr. Shibley: Yes. Did you not raise with anyone then that while you are producing that letter there is a second letter also not produced?

Mr. Grant: It didn't come to mind, until, as I say, and I don't know why it all of a sudden came to mind after my testimony had taken place, but ~~it didn't come to mind until then~~.
No, but

Mr. Shibley: The whole purpose of the exercise on the weekend, on that Monday, was to go through the file and see whether there was some further documentation that ~~we~~ might shed light on that confusion.

Mr. Grant: No, it wasn't; no, it wasn't, Mr. Shibley. Mr. Smith commented to you before he left that he recalled ~~that~~ or he thought that ~~we~~ there was some correspondence or a reference -

September 10, 197
4:40 - 4:45 p.m.
B.G.

Mr. Shibley: No, he never. I'm sorry, you are quite wrong on that. He never mentioned correspondence; ^{that} he did say ~~was~~ ^{that} there was some confusion.

Mr. Grant: Well, he just mentioned that ^{that} yes, so he himself undertook the search for the letter that was ~~was~~ July 14th.

Mr. Shibley: I see. Did you assist ~~Mr.~~ Mr. Smith in that?

Mr. Grant: No.

Mr. Shibley: And on that weekend, did you say to him — when they said, "Well, we are going to produce this July 14th letter, was anything said about the April 14th letter?"

Mr. Grant: No, sir; we discussed the contents of the July 14th letter, that's all.

Mr. Shibley: Did Mr. Cronyn have anything to do with selecting the ^{or} the production of the July 14 letter following that weekend?

Mr. Grant: No.

Mr. Shibley: ~~Do~~ You know of no communication ^{with him} ~~on~~ that referable weekend ~~referable~~ to the production of the July 14 letter?

Mr. Grant: No, we spent all of Friday afternoon and evening, all day Saturday and all day Sunday in Toronto.

Mr. Shibley: And over that period of time, ^{over that whole} ~~the~~ four-day period, ~~if~~ you did not discuss the documentation in question, namely, these two letters, with anyone except people within Ellis-Don, namely

Mr. Grant: That is correct.

Mr. Shibley: Is that right?

Mr. Grant: That's ~~r~~ correct.

Mr. Shibley: Now, then, having ~~if~~ raised the matter of the supplementary letter of April 14 on June ~~the~~ 28th, were you made aware

~~of the decision that had been made on Friday, I think the long weekend, on that week-end.~~

Sept. 10/73
4.45-4.50p.m.
B.A.

(Mr. Shibley)

the decision that had been taken on July 1. that is the long weekend, on that weekend, that the decision of Mr. Smith, agreed to by Mr. Cronyn, that this letter should not be produced.

Mr. Grant: I don't think I was aware of it until, probably, the Wednesday of that week.

Mr. Shibley: That would be the ____

Mr. Grant: The 4th July.

Mr. Shibley: Were you here when Mr. Cronyn gave his evidence on the 3rd?

Mr. Grant: On the Tuesday?

Mr. Shibley : Yes.

Mr. Grant: No.

Mr. Shibley: You weren't aware of it until the 4th?

Mr. Grant: Not that I can recall, no.

Mr. Shibley: I see. How did it develop as a subject on the 4th?

Mr. Grant: I think Mr. Smith just came back in the office on the Wednesday morning and, as usual, at that particular period in time, Hydro was sort of the first discussion of the morning. ^{You know,} ~~Read the Globe and Mail and discuss Hydro.~~

Mr. Shibley: I want to be more precise about it than that, Mr. Grant.

Mr. Brownlie: That is very difficult to do, I agree, in ~~under~~ those circumstances.

Mr. Shibley: Very good. I want to know, you say you became aware of the arrangement or agreement that the April 14 letter would not be produced on the 4th. Who made you aware?

Mr. Grant: Mr. Smith.

Mr. Shibley: What did he tell you?

Mr. Grant: Simply that he had decided not to divulge the letter. He thought it was only going to bring in a few more names which really bore no relevance, to the situation.

Mr. Shibley: And did you discuss the fact that Mr. Cronyn had failed to produced it on the 3rd, the day before?

H-2272-2

Mr. Grant: No, *Sir*.

Mr. Shibley: You never discussed that at all?

Mr. Grant: No, sir.

Mr. Shibley: Have you any knowledge or information of any arrangement as between Mr. Smith and Mr. Cronyn, extending back to before any testimony was given, that there should be no publication of any communication between them referable to Ontario Hydro, except after December 1, 1972?

Mr. Grant: No, sir, I am not.

Mr. Shibley: You are ~~not~~ aware of ~~any~~ anything like that?

Mr. Grant: No, sir.

Mr. Shibley: Have you any knowledge or information as to anything that might motivate Mr. Smith, in terms of Mr. Smith's interests, in withholding the publication of these two documents?

Mr. Grant: None.

Mr. Shibley: None. Have you any knowledge or information as to whether there was any interest of Mr. Cronyn's to be served by the non-publication of these documents?

Mr. Grant: No, not that I am aware of. I never discussed anything with Mr. Cronyn.

Mr. Shibley: I see. But from the point of view of Ellis-Don it didn't matter that these letters be published.

Mr. Grant: No. There is no harm to Ellis-Don whatsoever.

Mr. Shibley: Did Mr. Smith ever discuss with you the fact that he wanted to avoid embarrassment to Mr. Cronyn?

Mr. Grant: Yes, but not at any great length other than to comment, that, "I just don't want to embarrass the man".

Mr. Shibley: I have no further questions.

Mr. Chairman: No any of the committee ~~members~~ members have any questions ^{of} ~~Mr. Grant~~? That's all then, Mr. Grant, thank you.

Mr. Brownlie: May we retire, Mr. Chairman?

Mr. Chairman: There is nothing further that we know of now, at the present time.

Mr. Deans: Subject, of course, to recall.

Sept.10/73
4.45-4.50p.m.
B.A.

Mr. Shibley: Mr. Westcott.

Mr. Chairman: Mr. Westcott, would you come forward, please?

CLARENCE WILLIAM HOWARD WESTCOTT, Sworn.

Mr. Chairman: Now, I understand you have a statement, is that correct?

Mr. Westcott: Yes, sir, I have.

Mr. Chairman: If you would distribute those.

Mr. Westcott: ^{Thank you,} Mr. Chairman, After my _____

Mr. Chairman: If you would just wait for a minute we will have them distributed and then the members can have it before them.

(Tape H-2273 follows)

(Mr. Chariman)

~~Mr. Chariman:~~ All right, sir, I think we are ready.

Mr. Westcott: Mr. Chairman, after my discussion with committee counsel last Friday, I thought by making a brief statement at the outset I might assist the committee in dealing with any concerns you might have and might thereby help to expedite this matter for you insofar as my evidence is concerned.

First of all, Mr. Chairman, as some members of the committee may know, I have been associated with the Government of Ontario in a variety of capacities for 14 years. I served as Executive Assistant to the present Premier, from 1963 to 1971, while he was Minister of Education and Minister of then University Affairs, now Colleges and Universities. My present title is Executive Assistant to the Premier. In that capacity I am responsible for the normal staff functions of an executive assistant particularly as related to inquiries and requests for assistance emanating from the Premier's constituency. In addition to this task, I also function in a line capacity as the principal staff officer in charge of a section in the Premier's Office that includes approximately 25 people. This position involves the general supervision of the work of these members of the Premier's staff who are involved in assisting the Premier in preparation of replies to the roughly 20,000 pieces of written correspondence and the innumerable telephone inquiries from the general public that are received by the Office of the Premier each year.

Also, members of this section, included in this 25 or 26 people, are people who are called on to assist those who come in off the street. People who come in without an ~~appointment~~ appointment to see the Premier or get some help from the Premier's office.

Secondly, Mr. Chairman, with respect to the matter which is before the committee, I had no knowledge or information

Sep 10/73
4.50-4.55 pm
v.h.

(Mr. Westcott)

that there was going to be a new head office building for Ontario Hydro or that Hydro was taking any action in connection with this matter until it was announced in the newspapers in August of 1972. ^{Shibley} ~~What~~ I learned of the matter at that time, I can't recall discussing ^{it} with ~~any~~ anyone until it was raised in the Legislature by Mr. R.F. Nixon in December of 1972.

I have no recollection of any telephone conversations ^{between} Mr. Moog and myself in May or June of 1972, ^{Shibley} ~~but~~ it has been suggested that there may have been some conversations, I am unable to recollect whether or not I spoke to Mr. Moog at that time.

However, Mr. Chairman, I can be certain any conversation that might have taken place did not relate to the new head office building for ~~W~~ Ontario Hydro, since, as I mentioned, I did not become ~~was~~ aware of this matter until the newspaper announcement in late August last year.

Finally, Mr. Chairman, I wish to make it quite clear to you and to the committee that I do not know Mr. Donald Smith of Ellis-Don Construction, I have never met him nor have I ever had any communication with him of any kind or description at any time whatsoever.

Mr. Chairman: Thank you, Mr. Westcott. I suppose now that you have seen Mr. Smith today -- or did you see Mr. Smith when he was giving evidence today?

Mr. Westcott: No, I didn't.

Mr. Chairman: All right then, fine.

Mr. Shibley: Mr. Westcott, the statement is very helpful in telescoping some of the information we want from you. I am taking it that the entries in Mr. Moog's diary of May 2, which I ~~ex~~ may say ^{was} ~~was~~ struck as though it was not completed, and then another one on May 4 ~~was~~ where he may have tried to follow up on his earlier efforts, is a telephone communication about which you have no recollection whatsoever as to the subject matter?

Mr. Westcott: That's right, sir.

Mr. Shibley: Then, he had two ~~sets~~ entries in his diary, the first on June 20 and the second on June 22, 1972, and do I take from your statement that you have again no recollection whatsoever of the subject matter of those telephone communications?

Mr. Westcott: Not of the subject matter nor in fact, sir, ^{even} if we talked. I haven't convinced myself that we did get together and we did talk on the telephone.

Mr. Shibley: Now, Mr. Westcott, at about this time, namely about June 21, Mr. Moog was engaged in ~~public~~ planning or thinking about a mode of financing for the head office building, which, as part of his thinking, required the formation of a Crown corporation. ~~I know you are not briefed on this, so I will be a little more complete. There is in evidence~~

H-2274 follows

Sept. 10/73

4:55- 5 pm
C.B.

(Mr. Shibley)

I know you are not briefed on this, so I'll be a little more complete. There is in evidence a memorandum of June 21, wherein Mr. Moog was considering what has been called a put-through deal, and there is in evidence that he was considering using Equitable Insurance Company as a company for that purpose, and that that company would have had a ~~with~~holding tax problem, which problem there was ~~at~~thought could be overcome by the ^{creation} of a Crown corporation which would hold 90 per cent of the shares of the company, and avoid the need to withhold tax.

It's the only circumstance that I have found chronologically that existed on or about in the period of his June calls to you, June 20 and June 22, that I can relate to the time of the calls. You see it happens that on June 21 he was memoing himself about a put-through deal and I have to, with that background, ask you whether it helps you recall, and I'm not suggesting that this was the subject matter necessarily, but does that trigger any thought on your part that he was calling in respect of what the situation might be for the formation of a Crown corporation?

Mr. Westcott: No, not a ~~big~~ bit. As a matter of fact, I checked my desk ~~diary~~ diary to make sure I was in town on both of those days, because I didn't recall talking to him, and I discovered I was in one instance, and I ^{have} forget which one it was, I discovered Mr. Davis had cancelled some engagements because he was ill, and I assumed possibly he called about that, but I don't know. But no, sir, that doesn't help me recollect anything at all.

Mr. Shibley: All right. Then the other thing I want to ask you about is whether - incidentally, you've known Moog - how did you come to know Mr. Moog?

Mr. Westcott: I'm just trying to think of the year. The government set up a committee to look into the feasibility of the ~~the~~ being a science museum in the Province of Ontario. I can't think of the year, but I'll reach and say 1964, and I was chosen ^{as} the secretary of that committee; the chairman was Mr. Brownridge, I

Sept 4, 1955
8:44 - 5 pm
C..B.

(Mr. Westcott)

think Mr. Evans, the president of Honeywell, was on it, and the science editor of the Toronto Star, and Mr. Moog was on that committee, ~~and~~ that's where I first met him, and we met off and on for about year before our report was ~~made~~.

Mr. Shibley: Were you also a tenant in his building?

Mr. Westcott: A tenant?

Mr. Shibley: Yes.

Mr. Westcott: No, except to eat lunch when he had a restaurant in it.

Mr. Shibley: Sorry, I thought you had *been*.

Mr. Westcott: No, sir, no, sir.

Mr. Shibley: Was he a person with whom you were in regular telephone communication?

Mr. Westcott: No, I can say no. It's hard to say now, but I would say I *would have* probably gone for a year and a half without seeing or hearing of him. But then I might, I can recall a series of conversations with him at one time having to do with a relative or a friend who wanted to get into teacher's college. Another time some assistance with his son who had an educational problem. But other than that.

Mr. Shibley: Just personal things. Now then did Mr. Moog communicate with you on or about July 16 of this year respecting the entries in his diary of the phone calls?

Mr. Westcott: Hm hm.

Mr. Shibley: He did. Would you tell the committee what was said in the course of that conversation?

Mr. Westcott: Well, as best I can recall, it was just a matter of us discussing to see if either one of us recalled what was said, because I couldn't recall, and if in fact we even got together, ~~and~~ I suggested, or he suggested, I can't recall which it was ~~that~~ that happened to be the time that Mr. Davis was ill. ~~We~~ might have called about that and we might have got together or we might not *have*. That was more or less the conversation.

2275
next

H-2275-1

Mr. Shibley: Nothing more was said?

Mr. Westcott: Not that I can recall. I would remember, I think. It was a matter of checking to see if he thought the same as I did about it.

Mr. Shibley: Now, you had been on the board of Ryerson at one time. Is that correct?

Mr. Westcott: Yes, I was on the board from September 12, 1965, to January 7, 1969. Now, there is a slight technicality here. I resigned on January 7, 1969, but I believe I was legally still on the board until August 1, 1969, because I would still be on the board until the ~~board~~ order-in-council, the recommendation of council was passed, naming my replacement.

Mr. Shibley: Now, Ryerson is an institution with which you have had association for many years. Is that correct?

Mr. Westcott: Yes.

Mr. Shibley: And do you continue to have some association with that institution?

Mr. Westcott: In one way it has continued since ~~became~~^{I've come} into the Premier's office, in that it is the one place in Ontario that we have been able to help the Bahamas and other places in getting kids in. ~~and~~ Every once in a while I get a call from somebody that wants to get in, and I call down there and they have been very helpful. But other other that, no.

Mr. Shibley: Were you on the board when the contract was awarded to Ellis-Don to construct the two-phase expansion of that facility?

Mr. Westcott: Again I would have to explain, as we discussed on Friday, I have checked back on the minutes and although I resigned on January 7, 1969, the contract was ratified by the board at the following meeting which I didn't attend. I had resigned, but legally I was on the board until my replacement was passed and that wasn't until August 1. So I was a member of the board but I was not in attendance at the meeting when that was done.

Mr. Shibley: I see. Did you participate in the approval of ~~that~~ Ellis-Don as the contractor that should be selected?

H-2275-2

Mr. Westcott: No, but I believe I was earlier on the building committee that, as I recall, the toughest problem at that time was getting what we call the CAAT approval, the community college approval for the money to go ahead with it. ~~Once~~ Once that was done then the contract was let. And up until that time I was involved, but that wasn't with Ellis-Don really, and it was done by other than the board people. The recommendation of our technical people would come to the board for approval. But I wasn't part of that. No.

Mr. Shibley: That work is still in process, phase two, is that not so?

Mr. Westcott: Could be, but I haven't taken that much interest. The last time I was on the campus I think was when Mr. Davis and Mr. MacNaughton officially turned the sod. I don't think I have been on the campus since.

Mr. Shibley: Now then, I want to ask you some very general questions, Mr. Westcott. Did you have any communication with Mr. Cronyn respecting the Hydro head office building during the year 1972?

Mr. Westcott: Dates don't matter much to me at the moment because I can say, as a fact, that I don't recall talking to John Cronyn about anything in the past two years except personal conversations that we have had, that had nothing to do with that, and the COGP which he was chairman of.

Mr. Shibley: So that right up until the present moment...

Mr. Westcott: Right up until the present moment. I happened to run into him one day when he was on his way or coming from a hearing. I don't recall whether I said anything or not. But no, absolutely not, I haven't talked to Mr. Cronyn.

Mr. Shibley: All right. And in particular... well, I just won't bother with asking the question. Your answer is sufficiently comprehensive. Did you go down the line? Have you had any conversations right up to the present time with Mr. Fleck?

Mr. Westcott: Right up to the present time?

Mr. Shibley: Yes.

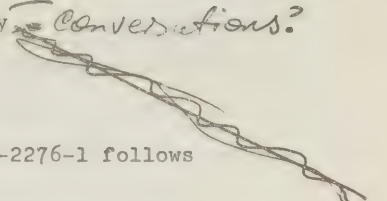
Mr. Westcott: Yes; just conversations and commenting about what is in the papers, but nothing where I ~~made~~ offered any

H-2275-3

(Mr. Westcott)

advice or was asked for any.

Mr. Shibley: ^{In}~~is~~ particular, during the months of November and December, 1972, were you privy to any conversations?



H-2276-1 follows

September 10th, 1973

5.05 = 5.10 pm

2276 - 1

AA

~~(Mr. Shibley)~~

~~particular during the months of November and December, 1972. He was very busy to say the least.~~

Mr. Westcott: No, I read it in the paper and, as I said, I don't recall discussing it with anyone. I don't. No sir.

MR. Shibley: Hydro, on the other hand, is an entity of some particular interest to you.

Mr. Westcott: YES IT is, I would have to admit.

Mr. Shibley: Historically, I understand, you were a lineman for Hydro.

Mr. Westcott: ^{Up until} ~~in~~ 1946, I climbed poles for Hydro, yes.

Mr. Shibley: And you have continued your interest, in general, as to the affairs of Hydro.

Mr. Westcott: YES, I think it is a great institution, and after you have climbed ~~hydro poles~~ poles in the middle of winter, you get a bit of affection for the place.

Mr. Chairman: Obviously, that was Ontario Hydro rather than one of the municipalities, was it?

Mr. Westcott: No, both sir.

Mr. Chairman: Both?

MR. Westcott: Both. I was ~~with~~ with line construction with Ontario Hydro and, if you will pardon the plug, I was with the Seaforth Public Utilities Commission.

Mr. Chairman: Were you? You must be a good man.

Mr. Westcott: Well, I was injured. I lost an eye in 1946 and ~~I can't~~ climb poles any more. So I was fortunately wise enough to go back to school ~~at~~ ^{at} Ryerson — another plug.

MR. Shibley: Have you discussed the Hydro head office building and the circumstances of its letting — the letting of the contract by Hydro, with anyone?

Mr. Westcott: No. That's a pretty — are you talking about yesterday or any time to anyone?

Mr. Shibley: Any time after trouble ^{about} it devolved.

MR. Westcott: Oh, I have probably talked to every

September 10th, 1973

5.05 - 5.10 pm

2276 - 2

AA

(Mr. Westcott)

newspaperman in the world that was interested in finding something out, but I

Mr. Shibley: Did you talk to your friend, Mr. Doyle, about it?

Mr. Westcott: I don't really know.

MR. Shibley: HE is a friend of yours, is he not?

Mr. Westcott: Oh, yes. Yes. Well, yes, a personal friend.

Mr. Shibley: Have you ever had any conversations with him about it?

Mr. ~~West~~ Westcott: No, I haven't. I haven't. I can't say that--not that I ~~can~~ recall, no, not that I recall. My conversations with Mr. Doyle have always . . .

Mr. Shibley: I am including conversations since the time this committee has been sitting.

Mr. Westcott: I have talked to Mr. Doyle, I think, about nuclear energy, on account ^{of} when I came back from California and seeing some plants down there, I have talked to him about Hydro things, but I haven't talked to him that I know about, that I can recall. ~~No~~, I would say no. No.

Mr. Shibley: Not about the head office building?

Mr. Westcott: No. No.

Mr. Shibley: There was a letter . . .

Mr. Renwick: Mr. Chairman, just before we leave that point, perhaps Mr. Westcott could just--I take it he was not contemplating a question along those lines from counsel--perhaps he could be a little more definite about his response. From the time this committee was appointed until now, did you have conversations with Mr. Doyle and was the matter of the Hydro building raised by you or by him in the course of any conversation you may have had with him about any matter?

Mr. Westcott: I talk to Mr. Doyle quite often about things like the beach at Wasaga Beach and other things, and

September 10th, 1973

5.05 - 5.10 pm

2276 - 3

AA

(Mr. Westcott)

I really don't think I did, on his initiative or mine. And if there was, and I don't recall it, it would be as an aside, rather than me volunteering information or being asked for information. No, I just don't recall. I don't recall.

Mr. Renwick: Specifically, did you make any comment to Mr. Doyle with respect to any editorial comment of the Globe and Mail about the Hydro head office building during the time that this committee has been sitting?

Mr. Westcott: No, I would say that I have never -- well, I hate to be that firm -- but I would say it is not a policy, ~~but I would never talk to any editor about an editorial that he has written~~

2277 - 1 follows

Sept. 10/73

5:10- 5:15 pm

C.B.

(Mr. Westcott)

~~but~~ but I would never talk to any editor about any editorial that he's written, ~~it~~ it is too late.

I don't know, I wouldn't have ~~done~~

Mr. Renwick: Your comment leads to an obvious question.

Did you speak to him in advance of any particular editorial comment.

Mr. Westcott: No, no I can say that, because I know that my relations with Mr. ~~Ray~~ Doyle are such that I wouldn't offer any advice, I'm sure. No, sir, I didn't.

Mr. Walker: You're not accustomed to influencing the editorial policy of the Globe and Mail?

Mr. Westcott: Only if I'm sure you can do it.

Mr. Shibley: That's like a Smith answer.

Mr. Westcott: That was said in jest. I don't know,

I ~~xxx~~ really don't know ~~how~~. Listen, on occasion they are really interested in information and will call to try and make sure they are right, and on occasion you'll dig up something for them to go into an editorial, a fact or information about statistics or something, because they try to be right. But, no, it is pretty hard to do with the Toronto papers, I would think.

~~Mr. Deans~~: I'd say it was impossible.

Mr. Deans: How do you make out with the papers outside of Toronto??

Mr. Shibley: I'd like to produce to you exhibit 178,

Mr. Westcott, which is a letter dated May 16, 1972. I don't know whether you've ever seen this letter ~~from~~ from Mr Gathercole to the Premier, and the notations that are made on it I might say are made at the instance of Mr. Fleck dictating them to Mr. Rowan. The document is without explanation and in terms of the notations on it, and I was wondering whether you could be of any assistance at all to this committee in that respect. You'll notice that in his letter Mr. Gathercole says to the

Sept. 10/73
5:10-5:15 pm
C.B.

(Mr. Shibley)

Premier

~~Premier~~ that Mr. McKeough ^{he} says, "On my trip to Japan with the Hon. Darcy McKeough I reviewed with him the desirability of proceeding as soon as practicable on the construction of the Ontario Hydro ^{office} building. I pointed out it was estimated," and so on. "Darcy indicated he was receptive and suggested we start the government procedure ~~shall~~ ^{having} rolling by ~~xxxx~~ Ontario Department of Public Works review it. I would ~~be~~ ^{be} pleased ^{to} have your advice."

Then the notation on June 9th, there is a June 9th date given to it. ~~The PREMIER~~ ^{The} spoke with Gathercole a few days ago and confirmed that ~~Government~~ ^{Government} Services is the proper place to start."

Now can you assist us at all respecting that exchange?

Mr. Westcott: I couldn't help you in the slightest.

Mr. Shibley: You have no knowledge or information?

Mr. Westcott: No, and it's possible that this letter came in ^{to} our office. ~~If~~ ^{If} it did, I didn't see it, but I would say no that the letter would be hand-delivered and it would never come to my view at all.

Mr. Shibley: You mentioned that first time ~~th~~ ^{the} ahead office building came to your attention was after it ~~was~~ ^{was} hit the press. Did you have any discussions with Mr. Cronyn at that point of time?

Mr. Westcott: I can say that I've talked to Mr. Cronyn many times but I never at any time talked to Mr. Cronyn. ~~I~~ ^I can't say I never talked to Mr. Cronyn because he ended up having an office next to mine, I talked to him quite often about the COGP and other things. But at no time did I talk to Mr. Cronyn about Hydro. As I say the only time ~~was~~

Mr. Shibley: Did you kid Mr. Cronyn about it?

Mr. Westcott: I may have said something about ~~it~~ ^{it}, I think the only time I met him, he was coming, I think from a hearing,

Sept. 10/73

5:10-5:15 pm
C.B.

(Mr. Westcott)

and said, "How did you make out?" or "How was it?" or something like that.

Mr. Shibley: All right, So your comments to him would be subsequent in point of time to his having given evidence.

Mr. Westcott: Yes. As a matter of fact, I think I was surprised he was called.

Mr. Shibley: I have no further questions, Mr. Chairman.

Mr. Chairman: ^{Does} anyone else in the committee ^{have} any questions of Mr. Westcott? That ~~wasn't~~ wasn't so bad, Mr. Westcott. Thank you ~~very~~ very much.

Mr. Westcott: Thank you very much.

Mr. Shibley: Mr. Chairman, Mr. Dillon was to have given evidence this afternoon but he had to attend a funeral in London, ~~and I think~~

H 2278 to follow

H-2278-1

(Mr. Shibley)

~~Mr. Chairman: Mr. Shibley has given evidence. This~~
~~afternoon he has no more to say and I~~
have told him, therefore, that his evidence which I expect to be relatively brief, will be heard tomorrow. I would ask that the committee recess now until tomorrow morning. I have yet to complete a reading of the ~~the~~ previous testimony of Mr. Cronyn. I want to do that and then I want to get a little re-organized as to the witnesses who are to ~~continue~~ thereafter. What with the interruptions, so to speak, of the April 14 letter from Ellis-Don, I need to gather my brief together again. So with the acquiescence of the committee, I would ask that we not continue now.

Mr. Chairman: Well, all right. I am not making a decision for the committee at this time, because I would ask that we go into an executive session for four or five minutes because, as you know, I was caught off-guard this morning - that's not the right phrase - I was caught by surprise as to the witnesses and I think, similarly, members of the committee were surprised, ~~and~~ I think, just as you want to recap your own position later this evening, I think the members of the committee would like to have your thoughts on it. Some of them, I know, wish to go on this evening. You have expressed reasons for not going on, but I think we want to regroup, or at least, reconsider our timetable ^{on this thing}. So I would ask that we go into executive session for a few moments, if that is fine with the committee, and at that time we may have an announcement as to when we will proceed again.

So we are adjourned now, for at least

Mr. Wm. Newman: Just before we adjourn. I know we are going into executive session, but I am just wondering if there are any witnesses on standby at this moment in time.

Mr. Shibley: Not for this evening, because, quite frankly, I knew, as I walked in here this morning that I had to have

Sept. 10/73
5.15-5.20p.m.
B.A.

H-2278-2

(Mr. Shibley)

this evening to properly prepare for tomorrow, and so I have not arranged for witnesses. I had arranged for Mr. Dillon to finish off the afternoon, so to speak, but he called me over the weekend, among many calls, and I felt he had a perfectly good reason.

Mr. Newman: I just felt they might as well go home if they were on standby.

Mr. Shibley: No.

Mr. Chairman: There are no witnesses, I gather, that are presently here this evening.

Mr. Finlayson: Well, I had Mr. Johnston here, this morning. At least, ^{I can get him down} ~~helps~~ on half an hour's notice. Mr. Coles ~~is~~ has been here most of the day. He went out for this afternoon when it didn't look as if you were going to reach him. I could have him for this evening. I don't want ~~me~~ anybody to get the impression that any witnesses ~~are~~ from Canada Square are not available.

Mr. Chairman: All right, leave that thought with us. I am concerned, as I expressed many times this morning, and I read what I did say this morning ~~and~~ there was a great deal of repetition in that I said, that we keep to our schedule of time. It may still be possible for us to do that.

Mr. Newman: Mr. Chairman, if we are not going ^{ahead} ~~into~~ tonight, I would like some ~~sort~~ sort of commitment, if we are not going ahead tonight, and Mr. Shibley ~~again~~ ^{probably} has very good reason because I am sure he has had a very busy weekend. I certainly would like to see ^{us come in} ~~ourselves~~ ^{so} ~~commit~~ ourselves, ^{are} ~~make~~ the witnesses ^{are} aware of the fact, that we will be sitting ^{this} ~~on~~ Saturday.

Mr. Chairman: That is what I wanted to start discussing in ~~the~~ executive session.

Mr. Shibley: I think you are afraid of what else I might come up with over another weekend. But I think, you can see I was

Sept. 10/73
5.15-5.20p.m.
B.A.

(Mr. Shibley)

interviewing the people from Ellis-Don on Friday, I interviewed Mr. Westcott ~~of~~ on Friday, I had ~~any~~ other interviews on Friday ^{you know,} I won't mention, and then ^{my} intervals are really filled up, but I would be glad to go over the programme, Mr. Chairman.

Mr. Chairman: That is what I have in mind, ~~and~~

^A As I say, the committee originally talked about meeting this evening, and at this point, I don't want to make the decision as to whether we will or will not meet, but ^{we} will be prepared to make a decision in committee.

Mr. Renwick : Mr. Chairman, I just want you to know that I will not be here on Saturday, I will be many miles away on Saturday.

Mr. Henderson : I too will not be here on Saturday.

Mr. Chairman: Well, let's hold it then. Maybe we will be meeting ~~tonight~~ tonight. But, in any event, I would ask ~~you~~ everybody ~~to~~ but the committee members and the clerk to leave us now and I will have some announcement to make to the press and those interested ~~people~~ ^{people} before many minutes, I hope.

Mr. Walker: As you say that, Mr. Chairman, maybe those assembled here who will not be present during the in-camera session ^A the executive session would be more appropriate wording, ~~perhaps they should stay~~

(Tape H-2279 follows)

Sep 10/73
5.20-5.25 pm
V.H.

(Mr. Walker)

~~will not be present during the in-camera session, the~~
~~executive session would be a more appropriate working~~
perhaps they should stick around outside. If we are
only going to be four or five minutes, it may be worth the wait.

Mr. Chairman: Well, we certainly won't be going
on I think before supper, anyway.

Mr. Walker: All I am saying if you want to com-
municate a message at the end of four or five minutes, it
may be very useful to have them here rather than ~~some~~

Mr. Chairman: All right.

Mr. Walker: ~~am~~ having dinner at Honest Ed's
or something.

Mr. Chairman: They can guide themselves.

The committee went into ~~camera~~ ^{executive session} at 5:20 ~~pm~~ o'clock, p.m.

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
	G.W. Walker
Clerk of the committee:	Paul Moore
Committee counsel:	R.E. Shibley, QC
Assistant to committee counsel:	J.P. Bell
Ontario Hydro counsel:	Pierre Genest, QC
	James McCallum, QC
Canada Square counsel:	Douglas Laidlaw, QC
	Gregory Rice
	G.D. Finlayson, QC
D.J. Smith counsel:	J.D. Brownlie
J.B. Cronyn counsel:	H.H. Solway, QC
President, Ellis-Don Ltd.:	D.J. Smith
Secretary to D.J. Smith:	Mrs. A.M. Shuttleworth
Secretary-treasurer, Ellis-Don Ltd.?	D.V. Grant
Executive assistant to the Premier:	C.W.H. Westcott

Sept. 11/73
10.05 to 10.10 a.m/
DT

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

H-2280-1

The committee met at 10.07 o'clock a.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order. I understand, Mr. Shibley, that the hon. Darcy McKeough is the first witness.

Mr. Shibley: Yes, sir.

Mr. Chairman: And I would ask him to come forward if he would. Mr. McKeough.

Hon. Mr. McKeough: Mr. Chairman.

Mr. Chairman: I can't say I am happy to see you ~~hear~~ here but your face is smiling as usual so if you have no objections to the oath which all the other witnesses have taken as well as the members of the House, I will deliver it to you, sir.

Darcy McKeough, sworn.

Mr. Chairman: Mr. Shibley.

Mr. Shibley: Mr. McKeough, what position did you hold in government as at the spring of 1972?

Hon. Mr. McKeough: Treasurer of Ontario.

Mr. Shibley: And in that capacity, did you have communication with anyone respecting the decision of Ontario Hydro to proceed with its head office building?

Hon. Mr. McKeough: None until the discussion with Mr. Gathercole, which he has referred to.

Mr. Shibley: Yes. I have had produced to you already what is exhibit 178, a letter of May 16, 1972, from Mr. Gathercole to the Premier, wherein reference is made to a trip to Japan, on which trip Mr. Gathercole was in your company. I would like to ask you first, did you discuss with Mr. Gathercole on that trip the Hydro head office building?

Hon. Mr. McKeough: Yes.

Mr. Shibley: What was the nature of the discussion?

Sept. 11/73
10.05 to 10.10 am
DT

H-2280-2

Hon. Mr. McKeough: Well, Mr. Gathercole indicated to me that they were proceeding on a lease-back of some sort or another. I think he indicated to me that following the cancellation of their building plans a couple of years prior to that that he had had discussion with my predecessor, Mr. MacNaughton, and Mr. MacNaughton had discussed with him the possibility of proceeding by way of lease-back. I think that was the beginning of the conversation and then Mr. Gathercole indicated they were proceeding on that route and proceeded to tell me something about the proposals which they had received, or the kind of proposals they had received.

Mr. Shibley: Mr. Nastich was in his company on that trip, is that correct? ~~and Mr. Nastich, we are informed, had in his possession a memorandum~~

(H-2281 to follow)

Sep. 11/73
10.10 to 10.15 am
fvk

~~Mr. Shibley~~
~~Mr. Shibley~~ 28 What ~~20221A~~
Hon. Mr. McKeough: Yes.

Mr. Shibley: And Mr. Nastich, we're informed, had in his possession a memorandum dated April 10, 1972 which I ask ~~me~~ be produced to you. It's a fairly comprehensive document which is exhibit 67 in these proceedings. Did Mr. Gathercole, or Mr. Nastich, produce that document to you and ask you to look at it in full, or in part?

Hon. Mr. McKeough: Not to my recollection. He may have. If he did I didn't read it. It was a discussion rather than my reading ^{anything.} ~~it.~~

Mr. Shibley: Did he, just returning to exhibit 178, was there discussion -

Mr. Renwick: Mr. Chairman, may I ask Mr. McKeough one question on that? In the course of this discussion with Mr. Gathercole and Mr. ~~Nastich~~ Nastich was it an actual discussion for the purpose of discussing the head|ffice matter or was it a casual conversation which came up in the course of your trip?

Hon. Mr. McKeough: I think it was something more than casual. I think it was something Mr. Gathercole wanted to discuss. He raised it with me.

Mr. Renwick: And from your point of view, in giving your evidence now, your attention was focused on the matter which was under discussion as a matter of importance?

Hon. Mr. McKeough: I recall I had some difficulty in maintaining my attention because this was about one hour out of San Francisco en route to Japan and I, perhaps, had a few other things on my mind.

Mr. Renwick: I think this is important to me. I think I would have had other things on my mind as well in similar ~~times~~ circumstances, but I'm just interested to know the extent to which this was, in fact, a discussion of an important matter or whether it appeared to be a casual exchange of information between yourself and Mr. Gathercole of a matter which could be

Sep. 11/73
10.10 to 10.15 am
fvk

(Mr. Renwick)

a subject of general conversation.

Hon. Mr. McKeough: I think more casual than a matter of importance.

Mr. Renwick: You didn't have any sensation that Mr. Gathercole was, in fact, consulting you about matters related to the head office building?

Hon. Mr. McKeough: No, I agreed that if the head office was ^{necessary and was} ~~not~~ to be proceeded with that probably the lease-back, from my knowledge, was the way to proceed.

Mr. Renwick: But I assume that Mr. Gathercole had said to you that he had spoken with the Premier and that he was speaking with you because the Premier had indicated that that would make sense.

Hon. Mr. McKeough: I don't know that the Premier's name was ever particularly mentioned. As I recall the beginnings of the conversation were that this had been ~~his~~ his discussions with Mr. MacNaughton and I can't honestly recall ~~whether~~ whether the Premier's name was mentioned or not.

Mr. Renwick: You don't have any conception of this discussion being related to yourself as Treasurer of Ontario being consulted by the head of the Ontario Hydro with respect to matters related to substantial ~~an~~ expenditures of public funds, in the broad sense of public funds?

Hon. Mr. McKeough: No, I think my reaction was, as apparently Mr. MacNaughton's was, that the credit of the province would not be used, the guarantee would not be used, and that, therefore, it was a preferable route to follow.

Mr. Renwick: Thank you, Mr. Chairman.

Mr. Shibley: Was the subject of a provincial guarantee a topic of conversation between yourself and Mr. Gathercole on that trip?

Hon. Mr. McKeough: No.

Mr. Shibley: It never came up?

Sep. 11/73
10.10 to 10.15 am
fvk

Hon. Mr. McKeough: No.

Mr. Shibley: Did, in fact, a provincial guarantee
ever arise as a subject for your consideration?

Hon. Mr. McKeough: No.

Mr. Shibley: Have you any information that there was
~~an~~ ever an application made, or any approach made to anyone in
government, to have a provincial guarantee apply to this transaction?

Hon. Mr. McKeough: No, I have no such knowledge.

Mr. Shibley: Nor have you any knowledge, I take it,
of any application to anyone in government that approval be given
to the formation of a Crown corporation?

Hon. Mr. McKeough: For the purposes of the building?

Mr. Shibley: Yes.

Hon. Mr. McKeough: No. A Crown corporation, of course
I think, even then was ^{perhaps} under discussion in ~~the~~ terms of Task Force
Hydro's recommendations, but ^{with} no reference to the building whatsoever.

Mr. Shibley: Right. Now, then, how long did this
discussion on the plane continue insofar as it related to ~~Hydro~~ ^{Hydro}?

(Tape H-2282 follows)

(Mr. Shibley)

~~and on the plane captain in order as it related to the~~ Hydro —
head office building?

Hon. Mr. McKeough: Oh I'm guessing something less than an hour. Mr. Gathercole and I can't recall the sequence; also talked about the work of Task Force Hydro and as to how they were progressing or not progressing, and I think perhaps those two conversations taken together might have been an hour and a half.

Mr. Shibley: Were the names of the developers who were contending for the project mentioned?

Hon. Mr. McKeough: I think probably they were. In fact, I am sure they were and as I recall there were five. From what I read in the media apparently there were four, but my recollection was that there were five. The only names which stick in my mind were, I think, Horizon's, and I am not sure of this because whether I ~~ma~~ remember this or whether I read it in the press since, I simply don't know. Horizon's, I think Y and R and certainly Ellis-Don, which was a name that I knew, was mentioned.

Mr. Shibley: How is it that you knew the name Ellis-Don?

Hon. Mr. McKeough: They are from London, they have done a considerable amount of work in Chatham and elsewhere in southwestern Ontario. Customers of a firm which I used to have something to do with, McKeough Sons* Company, and very good customers.

Mr. Shibley: Do you know Don Smith?

Hon. Mr. McKeough: I beg your pardon?

Mr. Shibley: Do you know Don Smith?

Hon. Mr. McKeough: Yes, I have met him three or four times, half a dozen times perhaps. I don't know that I on that trip would have connected Don Smith with Ellis-Don. I get Don Smith and Don Matthews confused, but perhaps we shouldn't be introducing that.

Mr. Deans: Who's Don Matthews?

Sept. 11/73
10:15-10:20 am
PLG

Mr. Shibley: But you do know Don Smith?

Hon. Mr. McKeough: I beg your pardon?

Mr. Shibley: You do know Don Smith?

Hon. Mr. McKeough: Yes.

Mr. Shibley: You have met him, you say, three or four times.

Hon. Mr. McKeough: I would think half a dozen times all told.

Mr. Shibley: And did you have conversations with him on those occasions?

Hon. Mr. McKeough: Yes, but certainly not about that!

Mr. Shibley: I realize that. I am only asking you these questions because my memory is that Mr. Smith said yesterday he did not know you.

Hon. Mr. McKeough: I'd be delighted if I don't.

Mr. Shibley: Did you get a copy of the letter which is Exhibit 178? The May 16 letter?

Mr. Hon. Mr. McKeough: I received it ~~in~~ this spring from Mr. Gathercole. I don't recall getting a copy of the letter at the time in May, after May 16, 1972. Whether I did or not, I don't know. My name doesn't show on it. I thought the letter accurately portrayed the substance of the conversation, so whether I received it or not I don't know, but I did receive it this ~~in~~ spring and thought then that it was an accurate portrayal of the conversation.

Mr. Shibley: I overlooked ~~in~~ asking you when the name Ellis-Don was raised with you by Mr. Gathercole, was that firm discussed at length with you?

Hon. Mr. McKeough: No, no more than the others. It stuck in my mind I think, because I knew them.

Mr. Shibley: Yes. All right. Then returning to the exhibit, there is a notation -- I am sorry, in the exhibit itself it says:

(Mr. Shibley)

"Darcy indicated that he was receptive."

Did you in fact, indicate to Mr. Gathercole that you were receptive to the idea of them going forward with their building?

Hon. Mr. McKeough: I indicated I think that I was receptive that if the building were to be proceeded with, that the lease-back was the way to do it.

Mr. Shibley: I see, so that you left the question of whether they were to proceed with the building an open one; the wording here, as far as you are concerned, could only mean that you were receptive to the lease-back type transaction.

Hon. Mr. McKeough: Yes. Yes.

Mr. Shibley: And was that related to the circumstance generally of financing for the project as it affected the overall funding of Hydro?

Hon. Mr. McKeough: Yes.

Mr. Shibley: And you were receptive because you did not want Hydro to rely upon its usual source of funding.

Hon. Mr. McKeough: Correct.

Mr. Shibley: And then it goes on and says:

"And suggested that we start the governmental procedural ball rolling by having the Ontario Department of Public Works ~~review~~ review it," and that is the Ministry of Government Services, as indicated by the note. Did you in fact, indicate that that was the ~~mode~~ mode of proceeding?

Hon. Mr. McKeough: Yes, I suggested that.

Tape H 2283 follows

September 11, 1973
10.20 - 10.25 a.m.
M.R.

~~Did you see the document in the file?~~

~~Did you see the document in the file?~~

~~(Hon. Mr. McKeough) Yes, I saw it.~~ That is correct.

Mr. Shibley: Why did you do that?

Hon. Mr. McKeough: Well, although Mr. Gathercole, not to my recollection, didn't show me this document, and I have not seen this document before, what he did describe, I think, was something which was very complicated in terms of annual rentals and maintenance and so on and so forth, and ~~and~~ ^{My} mind went back to a summary document, and I'm not sure on what building it was, which was prepared, I think, by consultants, where there had been four or five proposals, and I remember seeing that document in the course of other deliberations. This had nothing to do with Ontario Hydro, and ^{remembering} ~~remembering~~ what an incredibly complicated document that it was and that the particular agency which ~~was~~ had had this document prepared, as I recalled, ~~was~~ felt they weren't competent to decide which of the proposals made the most sense.

~~I see.~~ Certainly in listening to Mr. Gathercole, describing the complexities of the whole thing, I didn't think that I was competent certainly, ~~he~~ wasn't asking me, ~~but~~ I wouldn't have been competent to decide which of four or five proposals made the most sense from the point of view of Hydro, and that I didn't think that there was that kind of expertise in Hydro to do it.

And I suggested that perhaps they should have a consultant or perhaps should use Government Services who might have that kind of expertise. I've since become convinced that probably they didn't but I thought that some assistance was needed; whether it was Government Services or an independent consultant, I wasn't hung up on that.

Mr. Shibley: I see. So that really the mode of getting the expertise was secondary to the fact that you were

September 11, 1973
10.20 - 10.25 a.m.
M.R.

(Mr. Shibley)

impressing upon the chairman of Hydro the need to have expert advice and assistance in the selection of the developer. Is that correct?

Hon. Mr. McKeough: I think "impress~~ed~~" is too strong a word.

Mr. Shibley: All right.

Mr. McKeough: It was a suggestion.

Mr. Shibley: And that was as early as the trip to Japan, which took place when?

Hon. Mr. McKeough: I think the last week in April, or the first week in May, as I recall.

Mr. Shibley: Now then there is a notation on this letter that ~~it~~ has been without explanation in the sense that Mr. Fleck said ^{that} ~~this~~ is a notation dictated by Mr. Fleck to Mr. Rowan, which purports on its face to say that the Premier spoke with Mr. Gathercole, whereas we now know from both the Premier and Mr. Fleck that the Premier did not speak to Mr. Gathercole and confirm to him that Government Services was the proper place to start. Mr. Fleck is unable to explain why he should have dictated this note. The Premier could not shed light on the notation, ~~and~~ I'd like to ask you, sir, if you are able to provide any information to this committee that would explain that notation?

Hon. Mr. McKeough: No.

Mr. Shibley: You know of no involvement of the Ministry of Government Services at any time referable to this project?

Hon. Mr. McKeough: No, and I had no contact with anyone about the building; neither the Premier or Mr. Gathercole or Government Services or Dr. Fleck or anyone else, after I got back from the trip, which makes me think that I didn't get a copy of this May 16 letter at the time. I might have perhaps done something about it. I doubt it, at the time.

(Hon. Mr. McKeough)

So, essentially I ~~go~~ forgot about it after the conversation on the plance.

Mr. Shibley: All right then. Following - I'm ~~iam~~ leaving the document, if members have any further questions ---

Mr. Chairman: Mr. Glen Hodgson.

Mr. R.G. Hodgson: Mr. McKeough, you understand the government-Hydro relationship, ~~and~~ ^{and} would it be fair to say that you had considered Hydro on those sort of matters, masters in their own house?

Hon. Mr. McKeough: Yes. Well, ~~thaw~~ I would have considered they were masters in their own house assuming that they were proceeding the route that they were; ~~which was to go by~~

H-2284 to follow

H - 2284 - 1

(Mr. McKeough)

~~I would have considered they were masters in their own house assuming that they were proceeding on the route that they were~~
which was to go by the lease-back. Had they wanted to use the credit of the province I wouldn't have thought that they would have been as much masters in their own house.

Mr. R. G. Hodgson: You have that differential in your opinion? Thank you.

, Mr. Bullbrook: I just wanted to ask one question. During both of your discussions with Mr. Gathercole was there any discussion as to location of the building?

Hon. Mr. McKeough: There was no discussion, although certainly I assumed that it was being built where it is being built, but there was no discussion. That seemed to have been settled, at least that was where the conversation sort of began.

Mr. Shibley: Did you have any further communication with anyone within Hydrø referable to this project following that trip?

Hon. Mr. McKeough: No.

Mr. Shibley: Have you had any communication with any of the developers referable to the project?

Hon. Mr. McKeough: No.

Mr. Shibley: I have also had produced to you a letter dated April 14, 1972, exhibit 232, and I direct your attention to the postscript on the bottom of the page, "I have just talked to Colin Brown, who ^{was} talking to George Gathercole, who said he was going to be talking to ^{Darcy} ~~Mr. McKeough~~ in the next month, and thought we are one of the proposals being seriously considered. I would appreciate it if you could put in a good word with ^{Darcy} ~~Mr. McKeough~~ for me. I will also work on it myself".

Now did you at any time receive any communication first from Colin Brown referable to this project?

Hon. Mr. McKeough: No.

H - 2284 - 2

Mr. Shibley: Did you, other than the discussion you actually had with George Gathercole on the plane, ever have any discussion with him before or after that trip?

Hon. Mr. McKeough: No.

Mr. Shibley: Have you any information to the effect that Colin Brown had discussions with George Gathercole as it related to his pending trip with you to Japan?

Hon. Mr. McKeough: No.

Mr. Shibley: Do I take it that the first time you became aware that there might have been any such communication between Colin Brown and George Gathercole was when this document was produced?

Hon. Mr. McKeough: Correct.

Mr. Shibley: It goes on to say, "he was going to talk to ~~Darcy~~ and thought we are one of the proposals being seriously considered." I am not quite sure whether that relates to Colin Brown's thought or George Gathercole's thought — but so far as you are concerned that certainly couldn't relate to any thoughts expressed by you?

Hon. Mr. McKeough: Not on April 14th, no.

Mr. Shibley: Exactly. Now then it goes on and says:

"I would appreciate it if you could put in a good word with ~~Darcy~~ for me" and you will note this is a letter from Smith to John Cronyn, and in effect ~~Mr. Smith is asking~~ Mr. Smith is asking Mr. Cronyn to "put in a good word with ~~Darcy~~ for me."

Now, first, do you know John Cronyn?

Hon. Mr. McKeough: Yes.

Mr. Shibley: Have you known him for some time?

Hon. Mr. McKeough: Yes.

Mr. Shibley: And you have worked together with him on government matters?

Hon. Mr. McKeough: Yes.

Mr. Shibley: Now in respect of the request, did you

H - 2284 - 3

(Mr. Shibley)

ever at any time and in any way receive any communication from Mr. Cronyn which would amount to an intercession or putting in a good word with you on behalf of Mr. Smith?

Mr. McKeough: No.

Mr. Shibley: In fact, have you ever had discussion with Mr. Cronyn referable to the Ontario ^{Hydro} Head Office building?

Mr. McKeough: Well, since the questions appeared on the order paper and since the matter had^S been in the press, yes, I talked to Mr. Cronyn about it, but not prior to that time.

Mr. Shibley: I see. Well, just to cover a period of time, pending the tabling of Mr. Nixon's questions on December 1, 1972, had you any conversations with anyone referable to the Hydro head office building, other than the one with Mr. Gathercole?

Mr. McKeough: No.

Mr. Shibley: So that any discussions you had with anyone ~~there~~

Mr. McKeough: When I say "no", it appeared in the paper -

~~there~~

~~Mr. Shibley: I am really talking about the mode of~~

~~Mr. McKeough: that the contract had been awarded to~~

~~Canada Square. When was that, sir?~~

Tape H - 2285 follows

Sept. 11/73
10.30 to 10.35 am
DT

(Hon. Mr. McKeough)

~~in the paper~~

Mr. Shibley: I'm really talking about the ~~mode of letting~~ ^{mode of letting}

Hon. Mr. McKeough: The contract had been awarded to Canada Square, when was that, September or October, ~~at~~ ^{some} sometime along that point, and I may have at that point said to somebody, "Canada Square got the job," or something, but ^{no} the answer to your question I think is no.

Mr. Shibley: I was really directing my question to any discussion as to the manner in which this contract had been let by Hydro to Canada Square.

Hon. Mr. McKeough: No.

Mr. Shibley: And no discussions as to any effect thereon of the friendship between Mr. Moog and the Premier?

Hon. Mr. McKeough: No.

Mr. Shibley: I have no further questions, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Shibley. Any of the members? Mr. Renwick.

Mr. Renwick: Mr. Chairman, if I could ask Mr. McKeough a couple of questions. Did Mr. Davis at any time discuss with you your suggestion to Mr. Gathercole that he proceed ~~with~~ ^{through} Government Services?

Hon. Mr. McKeough: No.

Mr. Renwick: In connection with the relationship between Hydro and the government, and realizing that there's no legal connection, as Treasurer of Ontario during the period of time that you were Treasurer and from your general knowledge, intimate general knowledge of the operations of the government of Ontario, what is your conception of the relationship of the Treasurer of Ontario with the chairman of the Hydro Electric Power Commission on an informal on-going continuing basis?

Hon. Mr. McKeough: Well, I think it has been ~~misled~~ ^{del}, and hopefully this is one of the things that the Minister ^{as} of Energy and the Crown Corporation, that's not ~~as~~ ^{as} important, but the Minister ^{of} of Energy will hope to achieve. Certainly, it ~~has~~ ^{has} become apparent to me perhaps as Treasurer and since that Hydro were under some confusion as to who they were working with or for, the Premier, the ~~Executive~~

Sept. 11/73
10.30 to 10.35 am
DT

(Hon. Mr. McKeough)

Premier's office; the minister responsible, whoever he might have been at that particular point and I guess it was the Minister of the Environment, Mr. Auld; the Treasurer; the Resources field secretary; the Resources field deputy secretary. I think Hydro have had some considerable difficulty knowing just ~~where~~ who on an on-going basis they do relate to, and I think that's probably one of the pluses of the organization of the Ministry of Energy which will solve most of those problems, although not the problem but the relationship between the Treasurer and Hydro will remain something different than any of the other relationships. The other relationships I think exclusively can be channelled ~~through~~ in a formal sense through the Ministry of Energy. The Treasury relationship perhaps is a little bit different.

Mr. Renwick: In the lack of formality of ~~channels~~ channels of communication and reciprocal responsibilities of the government and Hydro, would you agree with my own assessment that over the period of time the informal but very real relationship between the Premier of Ontario and the chairman of Ontario Hydro has been a very important part of the association between Hydro and the government?

Hon. Mr. McKeough: I think that's fair, yes. In fairness to Hydro, I think Hydro have been perplexed—I was going to say frustrated, that may be too strong a word, but perplexed as to just who they should be talking to and sometimes, perhaps more often than necessary, turned to the Premier to try and get some answers.

Mr. Renwick: Insofar as your discussion with Mr. Gathercole on the flight to Japan and Mr. Gathercole's letter following up on that of May 16th to the Premier, you didn't feel in your capacity as Treasurer any obligation to follow up on the matter yourself?

Hon. Mr. McKeough: No, I ~~am~~ rightly or wrongly had the feeling that this was something which had been discussed with my predecessor even though that ~~was~~ was sometime previously, although by then he was the Chairman of the Management Board. Whether I felt that it had been discussed with the Premier ~~or~~ or not, I simply don't know and whether I thought that it had been discussed with the Minister responsible for Hydro who, in turn, might have discussed it with the Premier or with my predecessor, I just don't recall, but I didn't have any strong feelings

Sept. 11/73
10.30 to 10.35 am
DT

(Hon. Mr. McKegough)

or any feelings that this was something I should be following up on.

Mr. Renwick: And do I take it that the legal form in which this transaction was cast, that is this rather technical leaseback operation, was sufficient ~~enough~~ so far as the credit of the province was concerned not to involve you as Treasurer?

2

(H-2286 to follow)

Sep. 11/73
10.35 to 10.40 am
fvk

(Mr. Renwick)

~~... so far as the credit of the province was concerned not~~
~~to involve you as Treasurer, having regard to the fact that no~~
matter how you look at it Hydro was assuming long-term debt
operation of some \$44 million?

Hon. Mr. McKeough: Yes, but Hydro, or for that matter, any number of government agencies may sign leases which are within a programme, or not within a programme, but are not, therefore, the direct concern of the Treasurer, or the Chairman of Management Board, ~~of~~ the Chairman of Treasury Board, as it was then. One would not normally feel that a long-term lease impinged on the credit of the guarantor in the same way that a direct obligation would by building the building themselves.

Mr. Renwick: If I could just turn to one last aspect of this, you stated that sometime after Mr. Nixon tabled his questions in ~~the~~ the House, or during the period from that time until, say, the appointment of this committee, you had occasion to discuss, or comment, upon the Hydro building with Mr. Cronyn. Could you tell the committee, to the best of your recollection, the times and the substance of those discussions, for discussion or comment?

Hon. Mr. McKeough: No, I really can't. Mr. Cronyn happens to be, and perhaps in response to a previous question, a friend of long standing. ~~When~~ I suppose we got together for dinner, ^{or} lunch, perhaps once a week, and how it came up in the conversation I simply don't recall. It was a topic of some interest though, I think, with a number of people.

Mr. Renwick: Do you recall what the substance of your discussion was?

Hon. Mr. McKeough: Just that ~~the~~ there were questions on the order paper and that sort of discussion and what was going on. I think probably I recall ^{ed} ~~that~~ ^{Mr. Cronyn} that my only involvement had been the trip to Japan, or the discussions on the trip to Japan, that sort of thing.

Sep. 11/73
10.35 to 10.40 am
fvk

(Hon. Mr. McKeough)

At the same point in time, after the questions appeared on the order paper, a member of the press gallery phoned me with reference to Mr. Moog. He asked; "Did I know him", which I didn't. I didn't know his name. If his name was mentioned by Mr. Gathercole on the trip to Japan, it went right over my head because I knew nothing about him or didn't know who he was, nor would the name of Canada Square ~~was~~ have meant anything to me. The reporter was indicating that on the trip to Germany in August, 1972 that Mr. Moog had been in Munich at the same time so I wondered what the phone call was all about. To my knowledge it was not true or not correct. He was fishing and, I suppose, that was on my mind together with the questions on the order paper and, therefore, very logically would have discussed it with Mr. Cronyn.

Mr. Renwick: Perhaps to help you recall what your discussions with Mr. Cronyn may specifically have been about, Mr. Cronyn's evidence, confirmed by Mr. Smith subject to variation as to the time they occurred, is that Mr. Cronyn had called Mr. Smith and given him some advice with respect to any questions which might be raised by the press. ~~Does~~ Does that assist you in any way? Did Mr. Cronyn express to you any concern about the fact that Ellis-Don felt they had a lousy deal?

Hon. Mr. McKeough: I don't think Mr. Cronyn even said that to me. I think probably what he said was that, in his view and perhaps it was in Ellis-Don's view, I was certainly aware that Mr. Cronyn was a director of Ellis-Don, ~~whether~~ whether it was in his view or Ellis-Don's view I don't recall that the matter had been, I think, sloppily handled by Hydro. I think that was Mr. Cronyn's ~~concern~~ concern. Certainly, what came through to me, was his concern, not as a director, but what came through to me was his concern with government organizations generally and Hydro in particular. Mr. Cronyn has made a number of pungent observations about government organizations, or the lack of it, over the last few years both publicly and privately. So, the fact that he

(Hon. Mr. McKeough)

launched, on ~~some~~ several occasions as I recall into the, I think his word was "sloppiness", of how Hydro had handled this did not surprise me, nor will it surprise me if he does so again.

~~It is a matter of opinion, and I am not qualified to say whether it is a matter of opinion or not.~~
~~to you and me it is a matter of opinion between us.~~

(Tape H-2287 follows)

Sept. 11/73
10:40-10:45 am
PLG

(~~MrxxRenwick Hon. Mr. McKeough~~)

~~will it surprise me if he does so again.~~

Mr. Renwick: Did he indicate more specifically to you, and ^{was it a} ~~was it a~~ the matter of discussion between you and Mr. Cronyn, each of whom knows Mr. Smith, that ~~that~~ Mr. Smith had rankling within him a concern over a period of time, that his proposal had not been properly considered in relation to the other proposals, and had raised these matters, and that he, Mr. Cronyn, had also raised these matters?

Hon. Mr. McKeough: Mr. Cronyn may have indicated that Mr. Smith was mad, ~~that~~ but the tenor of any conversations we had was not that Mr. Smith was mad or that anybody else was mad or not mad, ~~the~~ the tenor was as to the procedures which had been followed or not followed by Hydro, which again I use the word, "sloppy." And I ask you to bear in mind about that time, December, I was becoming informally rather informed in energy matters leading to my appointment as parliamentary assistant on January 15, so we were talking about energy matters and perhaps my interest in Hydro was more keen at that moment than it would ~~have~~ have been earlier.

Mr. Renwick: Well the connection I want to try to make, I can well understand, as Mr. Cronyn's evidence has been, that he was concerned with the overall procedures which Hydro were following, rather than with the specific instance, But it appears again that the ~~the~~ precipitating cause of Mr. Cronyn's concern about the so-called sloppy procedures of Hydro was the sense of frustration which ~~Mr.~~ Mr. Smith was operating under. *Now when you say he may have been*

Hon. Mr. McKeough: That's how he found ~~it~~ out about it, obviously.

Mr. Renwick: Would it be fair to say that in your discussions with Mr. Cronyn, which I gather took place in December, about this matter, that the way in which the topic came up was because Mr. Smith was mad, and that he was upset and that Mr. Cronyn used this as the jumping-off point for a discussion about the sloppy procedures of Hydro?

Hon. Mr. McKeough: No, I don't really think so.

I think the discussions were about the sloppy procedures, but undoubtedly he mentioned to me that Mr. Smith was mad or annoyed or frustrated, but that wasn't the jumping-off point. You know, I can't reconstruct what our conversations were. I don't know when they were, or how long they were, or what, and I think a number of them were probably over dinner, so it ~~was~~ wouldn't be that clear anyway.

Mr. Renwick: I can understand that many of these discussions would be of a casual nature ~~was~~ but at the same time would be matters of ~~topical interest~~ ^{When Mr. McKeough is Right, Mr. Renwick:} and of concern in government circles, but again I ~~can~~ can only express my ~~reading~~ of Mr. Cronyn's evidence is that his concern about the sloppy procedures of Hydro were not related to Task Force Hydro, but were related specifically in his mind to the fact that they had a very disgruntled, defeated proposer on their hands.

Hon. Mr. McKeough: No, I couldn't agree with that. I recall many other conversations with Mr. Cronyn over the last three or four years about a whole host of things and whatever his personal concern may have been, that was never something which was obviously on his mind. His concern has been ~~for~~ for the ~~last~~ last three or four years with the organization of government and the reorganization of government, and the efficiency of government, and whenever you talk to Mr. Cronyn and for that matter, other members of COGP, the personal involvement, if there were a personal involvement, was never in the forefront. It was ~~always~~ always what was the system, rather than anything personal, ~~so~~ ~~I don't think~~ I certainly do not think that our conversations were based on the fact that Smith was mad, that Cronyn was a director of Ellis-Don and therefore he was raising this subject. That would be the last thing Mr. Cronyn would do.

Mr. Renwick: And yet Mr. Cronyn's evidence has been

H 2287-3

Sept. 11/73
10:40-10:45 am
PLG

(Mr. Renwick)

that having had Task Force Hydro thrust upon the Committee for Government Productivity, they immediately spun it off into a separate self-contained apartment and in fact, Mr. Cronyn's evidence

Tape H 2288 follows

September 11, 1973
10.45 - 10.50 a.m.
M.R.

(Mr. Renwick)

~~... immediately upon it and a separate self contained argument and that fact that Mr. Cronyn's evidence~~
appears to state that he had no specific internal knowledge of the workings of Hydro which would lead him to conclude that they were sloppy procedures, other than the complaints which he had received from Mr. Smith?

Hon. Mr. McKeough: Well, ~~and~~ ^I think you will have to ask Mr. Cronyn this, but certainly there ^{were} informal contacts between Task Force Hydro and the Committee on Government Productivity. The Committee on Government Productivity weren't operating in a vacuum. They were aware of what Task Force Hydro were doing. I don't know that there was regular reporting. They were in the same office, for heavens' sake. So obviously if staff of Task Force Hydro found something that was going wrong or in their view looked wrong in Hydro, I'm sure that was communicated on a daily informal basis or however often they got together. And there was a good working relationship between the two.

Mr. Renwick: I take it again, from the evidence, and from the reports of Task Force Hydro, that there appeared to be no focus of attention on the head office building procedures?

Hon. Mr. McKeough: No. No.

Mr. Renwick: Thank you, Mr. Chairman.

Mr. ~~Mr.~~ Chairman: Mr. Deans.

Mr. Deans: Thank you, Mr. Chairman. I have very few questions after Mr. Renwick. I want to ask particularly in regard to Mr. Cronyn's conversations whether you can recall, Mr. McKeough, whether the meetings or the discussions, ~~that~~ they weren't meetings for the purpose of that, but the discussions centring around the questions of Mr. Nixon, whether ~~the questions, with fact~~ it appeared that the questions on the Order Paper were the reasons why Mr. Cronyn raised the matter with you?

September 11, 1973
10.45 - 10.50 a.m.
M.R.

Hon. Mr. McKeough: I think I may have raised it with him.

Mr. Deans: You raised it with him?

Hon. Mr. McKeough: I have no idea.

Mr. Deans: You don't know whether he raised it with you or you raised it with him?

Hon. Mr. McKeough: I think perhaps I may have raised it with him because of the phone call that I had from the member of the press gallery, which was on my mind. I may have discussed it with a couple of other people too but I ...

Mr. Deans: Was this prior to the Nixon's questions or after?

Hon. Mr. McKeough: After.

Mr. Deans: After the Nixon questions.

Do you recall specifically whether Mr. Cronyn did, in fact, raise with you during any of those meetings or discussions the specific complaint of Ellis-Don?

Hon. Mr. McKeough: The specific complaint being what?

Mr. Deans: Being that Mr. Smith felt that ~~the~~ ~~had been~~ that his proposals had not been given a fair hearing.

Hon. Mr. McKeough: No, I don't think Mr. Cronyn ever went that far. He said that ...

Mr. Bullbrook: How far did he go?

Hon. Mr. McKeough: Well, I think he said that Hydro had not handled it well. ~~He thought~~ - I don't think he ever and that Smith was mad but I don't think Mr. Cronyn ever indicated to me that Smith had a right or not a right to be mad. That wasn't something we discussed. It was simply the way Hydro had handled it or not handled it.

Mr. Deans: Knowing you as I think I do, I would imagine that if someone said to you that Hydro has really mis-handled it and knowing your interest in energy matters, wouldn't you have asked ⁶⁶what brings you to that conclusion?

September 11, 1973
10.45 - 10.50 a.m.
M.R.

Hon. Mr. McKeough: No, I don't think so particularly.

Mr. Deans: You would just have said "oh?" *and*
~~let~~ let it go?

Hon. Mr. McKeough: No. We discussed it but —
no, I wouldn't have ...

Mr. Deans: You wouldn't have been interested in knowing why Mr. Cronyn was concerned about Hydro's handling of the contract?

Hon. Mr. McKeough: Well, I may have been. But I don't attach any importance to it one way or the other. I certainly wasn't about to do anything about it. I was in no position to do anything about it anyway.

Mr. Deans: I'm not suggesting for a moment that you were even asked to do anything about it. Because I suspect that probably you weren't. I'm really interested in your response more than I am interested in the questions themselves. I'm concerned about what in fact you ~~would~~ would respond to a suggestion by a good friend, knowledgeable in the field, that Hydro had mishandled, perhaps, the proposals put forward by a number of developers and that one of the developers, in particular, was concerned to the point of having raised it with Mr. Cronyn and that it had now become a topic of conversation in ~~the~~ the press and had now become a matter of concern in the Legislature. I would have thought that you would have been concerned about that if that was raised with you even over dinner,

H-2289 to follow

H - 2289 - 1

(Mr. Deans)

~~would have thought that you would have been concerned about~~
~~that if that was raised with you, even over dinner, and~~
recognizing that the press had come to you.

Mr. McKeough: I was probably more surprised than anything else, because normally - although I think Hydro like everybody else makes mistakes - that normally their procedures are pretty good. I think that was perhaps one of my initial surprises. I ~~did~~ didn't believe the tenor of the questions which were on the order paper, if I can put it that way, and I have enough confidence in Mr. Cronyn's opinion that when he said that in his view the procedures had been sloppy and hadn't been well handled, I would take his word for that, as I would on a number of other things. I wouldn't particularly pursue it and say, "How sloppy? How bad?"

Mr. Deans: It bothers me because I can recall the questions and the questions on the order paper were pretty pointed questions and they are questions of some considerable ^{political} importance.

Mr. McKeough: Right.

Mr. Deans: And you are considerably political in many ways, and I can hardly imagine you, knowing that the order paper has the questions on it, and that those questions are political and likely to be somewhat concerning to the government, that you would disregard or not pursue the discussion with Mr. Cronyn when he said to you, as a close friend, that he thought, subsequent to the questions being on the order paper, that Hydro had mis-handled the project. It doesn't sound like you. I consider you to be more careful than that.

Mr. W. Hodgson: That's a plus for you, ^{Deans} Cronyn.

Mr. Deans: Yes, that's okay. I have watched him very carefully.

Mr. McKeough: I am obviously much less political than

H - 2289 - 2

(Mr. McKeough)

you think I am.

Mr. Deans: Is that right? Well, I want to ask you then, Mr. Cronyn ^{had} expressed a concern, Mr. Nixon had already raised the questions, the press were interested, as you know, Mr. Cronyn indicates that Mr. Smith is upset, Mr. Cronyn indicates that he doesn't believe that Hydro has handled it well - what sort of reaction did you have to all of those points?

Mr. McKeough: I think we probably had another drink and talked about something else. There are a lot of people who are upset about a lot of things every day of the week and if one got upset and went to action stations about every bit of rumour and gossip and talk for a question on the order paper that one hears around these buildings, you would be a raving maniac very quickly.

Mr. Deans: Would you agree with me that this wasn't a bit of idle gossip or just a bit of idle talk around the building, this was your close friend, John Cronyn, with whom you dine twice a week -----

Mr. McKeough: No, once I said.

Mr. Deans: Once a week -- oh, I am sorry, Mr. Smith dines with Mr. Brown twice a week -- with whom you dine once a week, expressing a concern, and Mr. Cronyn is a person in whom you have some confidence, you said so.

Mr. McKeough: Yes, but Mr. Cronyn expresses concern about a lot of things and I accept his concern, I just don't go to panic stations ~~like~~ that's all.

Mr. Deans: Even though at that point you know that there is an interest both from the Leader of the Opposition and from the press in the matter and that, in fact, there is something more than simply rumour to the effect that Hydro hasn't handled it too well?

Mr. McKeough: Well, as I say those kind of rumours and questions and so on abound. My mind was preoccupied with some other things at that point too, so perhaps my interest in the whole

H - 2289 - 3

(Mr. McKeough)

thing was not quite as keen as it might have been on another occasion.

Mr. Deans: Okay.

Mr. Chairman: It wasn't a case of your political astuteness?

Mr. Deans: You do know Colin Brown by the way?
I just wanted to check.

Mr. Genest: Mr. Chairman, in fairness to the witness, it should be pointed out that the questions were answered in the matter of a couple of weeks.

~~Mr. Genest: Mr. Chairman, in fairness to the witness,~~

Mr. Bullbrook: I want to get to the answers to the questions.

Mr. Genest: Yes, well I mean other people.

Mr. Deans: I might say to Mr. Genest, in fairness to the witness, that the questions may have been answered but that it wasn't the questions that were bothering me, it was the sequence of events including the questions, and the fact that a person of some considerable importance to Mr. McKeough, raised with him the matter of Hydro's involvement. You do know Colin Brown?

Mr. McKeough: I have met him on three or four occasions. I know him about as well as I know Mr. Smith, but Mr. Smith doesn't know me so I had better be careful. I have met him three or four times.

Mr. Deans: Well Mr. Smith doesn't know you and he knows nothing about Colin Brown though he eats lunch with him twice a week. Mr. Brown ~~was~~ did never at any time - I assume Mr. Brown never spoke to you about this *matter?*

Mr. McKeough: No.

Mr. Deans: Okay.

Mr. Chairman: Mr. Glen Hodgson?

Mr. R. G. Hodgson: Mr. McKeough, would it be fair to

Sep. 11/73
10.55 to 11.00 am
fvk

~~Mr. R.G. Hodgson: I think that's correct.~~
to say that the months of September, October, November and December would not elicit from you the same interest that it would at the present moment, or before that date?

Hon. Mr. McKeough: I think that's correct.

Mr. R.G. Hodgson: Because knowing you as I do I think if you were in the cabinet in those months that you might have done a little inquiry at that time, but you were not in the cabinet and, therefore, not in the same position as you are now.

Hon. Mr. McKeough: Correct.

Mr. R.G. Hodgson: Mr. McKeough, you have mentioned that the Davis-Moog friendship that we have been reading about some 40 ~~some~~ days in the paper and one paragraph ~~of~~ a Toronto ~~Ex~~ daily, you didn't connect that, in your mind, as to being anything in fact because you didn't have any knowledge of it?

Hon. Mr. McKeough: None. No knowledge of it.

Mr. R.G. Hodgson: ^{Do} ~~Do~~ you know of any presentation, or discussion, of the Hydro building project before Treasury Board or, later, Management Board?

Hon. Mr. McKeough: No.

Mr. R.G. Hodgson: Was Mr. Nastich present with you when your discussions took place with Mr. Gathercole on the airplane to Japan?

Hon. Mr. McKeough: He was on the airplane but he wasn't involved in the conversation.

Mr. R.G. Hodgson: Was the right to sue Hydro ever mentioned at any time with regard to Mr. Gathercole in any discussions?

Hon. Mr. McKeough: To sue? No.

Mr. R.G. ~~Hodgson~~ Hodgson: Thank you.

Mr. Chairman: Mr. Bullbrook did you indicate that you wanted to ask questions?

Sep. 11/73
10.55 to 11.00 am
fvk

Mr. Bullbrook: Yes, I do. I wanted to - I think it's very important, frankly, Mr. Minister, for the purpose of the record that we understand exactly that nothing ~~that~~ that you said during your discussions with Mr. Cronyn might have been a motivating factor in anything that led to this particular inquiry. So I want to pursue for a moment, if I might, the question ~~that~~ Mr. Renwick and Mr. Deans have undertaken and, if I can collaterally say, I'm going to put Mr. Deans in for a ~~QC~~ QC come January. He had some very pointed questions.

Mr. W. Hodgson: You were going to appoint ~~some~~ a commissioner of the Hydro, too, ~~and~~.

Mr. Bullbrook: I tell you I have about as much chance of getting a QC for Mr. Deans as I would appointing Mrs. ~~Shuttleworth~~ *Shuttleworth*.

Mr. W. Hodgson: *Why don't* you just make your recommendations?

Mr. Shibley: Touché.

Mr. Bullbrook: My recommendations aren't always listened to ~~or~~ either. I'm interested in following your discussions with Mr. Cronyn because I want to be frank with you in ~~telling~~ telling you that I, like Mr. Deans, recognize the ~~lack~~ incisiveness of your mind. Do I understand you correctly to say that there was reference, by Mr. Cronyn, to the fact that Mr. Smith had made complaints to him about the ~~and~~ procedures ~~which~~ adopted by Hydro with respect to the proposal?

Hon. Mr. McKeough: No. I wouldn't put it that way. *You have* ~~He~~ said that Mr. Smith had made complaints to Mr. Cronyn. I think John Cronyn probably said to me, my recollection would be that he said: ~~that~~ "Smith's mad. He's upset about it." But ~~he~~ *he* certainly ~~wasn't~~ *wasn't* ~~didn't~~ put it in the light that he ~~complained~~ *had* to Mr. Cronyn. *to* Remember something else, I guess, and perhaps this is partial response to Mr. Deans' question. The building was ~~not~~ going ahead at this moment. The hoarding was up. The old structures were down. There was a hole in the ground. Even if I had been concerned about it, it was a little ~~late~~ late for concern. The building was going ahead.

Sep. 11/73
10.55 to 11.00am
fvk

~~XXXXXXXXXX~~

Mr. Bullbrook: But you were concerned with the procedures ~~and~~ adopted by Hydro in connection with it? You were familiar with the fact that answers to the Leader of the Opposition's questions had been filed?

Hon. Mr. McKeough: No, I really wasn't. I don't think I realized that until January. They ~~was~~ were filed on the last day of the session and when Hansard came out a week later, which would have been close to Christmas, I didn't rush to read it.

Mr. Bullbrook: Could I ask you, Mr. Chairman, if Mr. McKeough might have a copy of exhibit number two, I believe it is, which are the responses. I direct your attention to page four. Have you ever had occasion to read this?

Hon. Mr. McKeough: No. No.

Mr. Bullbrook: You've never had occasion to, [?] notwithstanding the allegation of sloppy procedures by Mr. Cronyn, you've never had occasion to read the responses to the Leader of the Opposition?

Hon. Mr. McKeough: Oh, that appeared on the order paper?

Mr. Bullbrook: Yes.

Hon. Mr. McKeough: Yes, I may have read them at some point or another.

(Tape H-2291 follows)

Sept. 11/73
11:00-11:05 am
PLG

~~(Mr. Bullbrook)~~

~~ever had or would read the responses to the leader of
the party?~~

~~Hon. Mr. McKeough: I don't recall appearing on the Order~~

~~Page?~~

~~Mr. Bullbrook: Yes.~~

~~Hon. Mr. McKeough: Yes, I may have read them at
some point or another.~~

Mr. Bullbrook: Well, I want to point out to you
at the top of page 5. It reads:

"All were carefully analyzed and discussed with
each developer individually and the decision was made to
~~not~~ proceed to enter into an agreement with Canada Square
Corporation, as it best met our requirements and best conformed
to the following criteria:"

I don't intend to read those criteria. ~~However,~~ I take it
you were familiar with this response?

Hon. Mr. McKeough: There is no reason why I would
have been. I may have read it in Hansard some time later in
January or February, but I don't honestly recall.

Mr. Bullbrook: Did you ever have occasion to
discuss these responses with Mr. Cronyn?

Hon. Mr. McKeough: No.

Mr. Bullbrook: Did you ever have any further
discussion with Mr. Cronyn with respect to the complaints of
Ellis-Don after the ~~was~~ original discussion that you had?

Hon. Mr. McKeough: Oh, I think probably we talked
about it after it started to appear in the news media.

Mr. Bullbrook: And when you discussed it with
Mr. Cronyn after it appeared in the news media, did you
discuss with Mr. Cronyn any continuance of conversation by
Ellis-Don with the news media?

Hon. Mr. McKeough: No.

Mr. Bullbrook: You didn't at any time. That is what
I consider very important, because the evidence has been that

(Mr. Bullbrook)

purportedly somebody conveyed to the press, and somebody characterized as a person close to the Cabinet in the Progressive Conservative Party, that Mr. Smith should be ~~silent~~ ^{silent} in effect. I take it that your evidence is that at no time during your discussions with Mr. Cronyn did you convey anything to him, that he as a reasonable man could possibly construe as advice of that nature?

Hon. Mr. McKeough: No.

Mr. Bullbrook: I want to ask, if I may, when you were with Mr. Gathercole on the trip to Japan, the evidence has been that he did discuss with you the individual developers, and I want to ask you why that came about. Can you help us in that respect?

Hon. Mr. McKeough: Oh, I may have asked who the proposals were from, as a matter of interest. He didn't discuss them individually particularly. He just mentioned names and I don't really recall the discussion, but A may have suggested a 50-story building and B a 50-story ~~under~~ underground building, etc. There was nothing specific about each of the builders.

Mr. Bullbrook: You might have asked him to name the developers who were making proposals.

Hon. Mr. McKeough: I may have said, "How many proposals do you have?" or ~~or~~ "who are they from?" or something.

Mr. Bullbrook: Had you had any discussions prior to that flight with anybody that would give you information as to who was proposing or who were proposing with respect to this contract?

Hon. Mr. McKeough: No.

Mr. Bullbrook: None ~~or~~ whatever.

Hon. Mr. McKeough: No. I really wasn't aware that it was under discussion at that moment, prior to the flight.

Mr. Bullbrook: You had no familiarity with that at all.

Hon. Mr. McKeough: None. Other than going back,

(~~MxxxMx~~ Hon. Mr. McKeough)

whatever it ~~was~~ was, two years, when the building had been discussed, in terms of Hydro doing it themselves.

Mr. Bullbrook: And you were privy to the cessation of their activities at that time?

Hon. Mr. McKeough: Yes.

Mr. Bullbrook: I wanted to ask you, in connection with your flight with Mr. Gathercole, the evidence has been, Mr. McKeough, that Mr. Gathercole requested some of the administration at Hydro to prepare certain material for him for submission to Cabinet. I wanted to ask you, did you at any time intimate to Mr. Gathercole that there would be the necessity of the preparation or of a submission to Cabinet?

Hon. Mr. McKeough: No.

Mr. Bullbrook: Are you familiar or do you have any information with respect to whether any person advised Mr. Gathercole that there would ~~be~~ have to be a submission to Cabinet?

Hon. Mr. McKeough: No.

Mr. Bullbrook: Did Mr. Gathercole at any time advise you that he was going to make a submission to Cabinet?

Hon. Mr. McKeough: No.

Mr. Bullbrook: With respect to the question of Government ~~and~~ Services, would it be possible that the involvement of Government Services ~~and~~ with the construction of the OISE building might have been the situation that you were trying to relate back to previously?

Hon. Mr. McKeough: No.

Mr. Bullbrook: It wasn't. Were you familiar with the activity of Government Services in connection with the OISE building previously?

Hon. Mr. McKeough: Yes. Yes.

Mr. Bullbrook: You were. And were you familiar with the person or the corporation ~~who~~ was successful in getting ~~the~~ the contract?

H 2291-4

Sept. 11/73
11:00-11:05 am
PLG

Hon. Mr. McKeough:

No, no. I was only familiar with Government Services in terms of some of the problems as to who -- the problems, as I recall, of whoever it was, the Chiropractic College moving, and then ~~was~~ nothing to do with the actual construction of the building or ~~something like~~

Tape H 2292 follows

Sept. 11/73
11.05 to 11.10 am
DT

(Hon. Mr. McKeough)

~~and then nothing to do with the actual construction of the building or~~
~~choosing the proposal, nothing to do with that --~~

Mr. Bullbrook: I ask you - I am sorry, sir, go ahead.

Hon. Mr. McKeough: And then the only other thing I remember about that is some hassles about the furniture in which Government Services became involved and that ~~was~~ was what I -- when you ask about the involvement, was I aware of the involvement between Government Services and the OISE building, the only involvement I'm aware of was on the furniture ~~and of things.~~

Mr. Bullbrook: I'm interested in knowing whether you recall, because of that involvement, having heard ~~the name of or~~ met Mr. Moog?

McKeough:

Hon. Mr. McKeough: No, I had never heard it before.

Mr. Bullbrook: You had never heard it? You weren't familiar at that time, at the time of the letting of the contract to Canada Square with respect to the new Hydro office building, that the same principal was involved as had been involved with OISE? Is that correct?

Hon. Mr. McKeough: No. I ~~mean~~ ~~didn't~~ I was not aware. I was not aware, no.

Mr. Bullbrook: Thanks, very much.

Mr. Chairman: Mr. Shibley, you had one or two follow-up questions, I believe.

Mr. Shibley: Mr. McKeough, in August of 1972 and actually leading up to August, there was correspondence in June referable to the province and more particularly Hydro effecting borrowings in Switzerland. I think the province had taken a line position for ~~Swiss~~ Swiss funds and then assigned that position to Hydro in that period of time. You were still Treasurer at that time, in ~~June~~ June of 1972. Did you at any time, during that summer, on the period I am talking about now is June, July, August of 1972, receive any information or communication as to the effect upon Mr. Moog's efforts to raise money in Switzerland for the Hydro building that the borrowings by Hydro had upon those efforts? Do you follow me?

Hon. Mr. McKeough: No, none. I ~~didn't~~ didn't know Mr.

Sept. 11/73
11.05 to 11.10 am
DT

(Hon. Mr. McKeough)

Moog and the answer to that is completely no. There's ^{perhaps} one other ~~point~~ ^{has} point, though, ~~as~~ we had assigned that to Hydro. That's not correct. The Swiss syndicate wouldn't lend the money to us because of their rules.

Mr. Shibley: Yes. But I think they communicated the fact that they wouldn't lend it to the province but they would lend it to Hydro.

Hon. Mr. McKeough: Right.

Mr. Shibley: Can you -

Hon. Mr. McKeough: And we had been involved for something like four years in trying to get into the Swiss queue.

Mr. Shibley: Yes.

Hon. Mr. McKeough: And this all developed very quickly.

Mr. Shibley: Do you know why they would have thought to say, ^{55/1} we can't lend it to you under our existing rules but we can lend it to Hydro???

Hon. Mr. McKeough: It is some rule of the Swiss banking system or the Swiss money system which was explained to me in that they don't lend to provinces or state governments but they are in the business of lending money to utilities, but then we didn't much care.

Mr. Shibley: Have you any information—my question ^{really} is directed to this—have you any information why they might have had Ontario ~~Hydro~~ Hydro in mind as an alternative borrower?

Hon. Mr. McKeough: Oh, well, because the discussions over I guess a four-year period prior to this —

Mr. Shibley: Yes.

Hon. Mr. McKeough: I think it's even longer than four years because I think Mr. Macdonald told me that this was one of his first projects. The discussions would have always been on the basis of Ontario and Ontario Hydro. For example, when we went to Japan—

Mr. Shibley: Yes.

Hon. Mr. McKeough: —the Japanese would only lend to — initially, at any rate, would only lend to the province and somewhere down

(Hon. Mr. McKeough)

the line they might lend to Ontario Hydro after the credit had been established.

Mr. Shibley: Right.

Hon. Mr. McKeough: So that these things are always done together and there's a high degree of synchronization.

Mr. Shibley: And that's because the borrowings of Hydro are very ~~substantial~~ substantial and almost equate with the ~~the~~ borrowings of the province itself, is that not so?

Hon. Mr. McKeough: Well, on the public market of course they are much higher, yes.

Mr. Shibley: Yes, so there's nothing unique about that situation. Now, then, the other thing I want to ask you about is, Mr. Deans and Mr. Bullbrook were asking you about your conversations -

Hon. Mr. McKeough: Let me just add to that, it happened a couple of times that the people on the street would come to Ontario and say, "It's a good time to borrow money," and we would say, "We don't want it, —"

Mr. Shibley: Right.

Hon. Mr. McKeough: "Get in touch with Hydro," or the other way around, so that there's a close synchronization there and there's nothing significant in the fact that the Swiss loan went to Hydro.

Mr. Shibley: All right.

Hon. Mr. McKeough: As opposed to the province.

Mr. Shibley: Now, then, in November of 1972, Mr. Cronyn had by November 7, 1972, also spoken to Mr. Fleck respecting Ellis-Don and the manner in which Hydro had let this contract and —

Mr. Eberle: Excuse me, Mr. Shibley. I think that's only part of the evidence, Mr. Chairman.

Mr. Chairman: Mr. Eberle.

~~Mr. Eberle: It is an error, maybe this wasn't connected.~~

~~Mr. Chairman: I think it is.~~

(H-2293 to follow)

H - 2293 - 1

(Mr. Shibley)

~~and the fact that the evidence was not connected.~~
Mr. Eberle: Excuse me, Mr. Shibley, I think that is only part of the evidence, Mr. Chairman. I am sorry, maybe this wasn't connected.

Mr. Chairman: I think it is.

Mr. Eberle: I am sorry, Mr. Chairman, but I think Mr. Shibley is only quoting part of the evidence. It was not Mr. Cronyn's evidence that he had spoken to Mr. Fleck before November 7th.

Mr. Shibley: I am sorry ^{You are quite right.} ~~It~~ was Mr. Fleck's evidence that Mr. Cronyn had spoken to him on or before November 7th, ~~and~~ He references the time by an entry in his Day-Timer wherein Mr. Cronyn's initials, Ellis-Don, and the Hydro building are referenced. And he says it is his best recollection by reference to his Day-Timer that the conversations between ~~he~~ ^{him} and Cronyn occurred prior to that time.

Mr. Cronyn's best recollection of his conversations with Mr. Fleck, I believe, are in late November or early December, ~~or~~ more likely he says after the Nixon questions were tabled on December 1.

Now, having regard for the evidence of Mr. Fleck as to the timing of that conversation which appears to equate, I might say, with ^{the} conversation Mr. Cronyn had with you, that it was a sloppy job; and having regard for the fact that Mr. Fleck on November 9, it appears, requested a narrative to be prepared by Hydro; and having regard for the fact that there is a document of November 15 which was disseminated to the Premier, to Mr. Fleck, and to the Hon. Mr. Auld, and I think one other minister as well, ~~—~~ perhaps that document could be produced to you ~~—~~ against the background of that kind of exchange, if you like, between a number of people within government and Hydro, and against the background of the conversations between the people I

H - 2293 - 2

(Mr. Shibley)

have mentioned, I ask you now to try and relate against that evidence the conversation you had with Mr. Cronyn, first in point of time and, secondly, in point of content.

Hon. Mr. McKeough: Well, to the best of my recollection, some time in December, and as I described it, as a relatively casual conversation. Perhaps not that casual, Mr. Shibley. As I recall, during that time we had lunch or ~~at~~ dinner with either/or Mr. Muncaster or Mr. Dillon and, therefore, Hydro was the subject of discussion - broadly - of which this was one aspect; but I really don't think I have anything to add to what I have ~~said~~ said in terms of the general casualness of the conversation. If it was more than casual, and if it was pointed, it certainly escaped me.

Mr. Shibley: Well, sir, I just wanted you to have the opportunity to reflect upon your evidence in that respect against the background of that information. I realize you were not in the cabinet in November. I just wonder whether you were privy to any of the communications, particularly the written narrative of November 15.

Hon. Mr. McKeough: No.

Mr. Shibley: You never saw that?

Hon. Mr. McKeough: No, the first I knew about it was when I think I read about it in the paper, although it is a reasonable thing to have prepared.

Mr. Shibley: I have one more area to cover with you. You had discussion in December with Mr. Cronyn. The matter, so to speak, exploded again by the article in the Globe and Mail on April 28th - you are familiar with the article, did you have conversation with Mr. Cronyn following the publication of that article?

Hon. Mr. McKeough: Oh, I am sure I did, yes.

Mr. Shibley: And what was the substance of your discussion

Sept. 11, 1973
11.10-11.15 a.m.
M.F.

H - 2293 - 3

(Mr. Shibley)

with him in that respect?

Hon. Mr. McKeough: Well I suppose we have had
several conversations about it since, I think nothing ^{germane} ~~relevant~~
to this discussion. ~~-----~~

Tape H - 2294 follows

September 11, 1973
11.15 - 11.20 a.m.
M.R.

(Hon. Mr. McKeough)

~~There is a discussion about the Hydro contract.~~ I may have said some things about his friend Mr. Smith, which probably don't need to be part of the record. I don't think anything particular, just discussions, casual discussions about the whole thing. ~~More~~ ^{Later} later about his particular involvement, I suppose.

Mr. Shibley: I'm finished.

Mr. Deans: I have one question.

Mr. Chairman: Fine, Mr. Deans.

Mr. Deans: Thank you.

Mr. Chairman: I'd like to keep this moving along, because this was supposedly a 15-minute witness and we've been on it about an hour ~~and~~ ^{and}.

Mr. Deans: He's provided us with very valuable information.

Mr. Chairman: I don't think he's said a thing of value.

Mr. Deans: Did either Mr. Muncaster or Mr. Dillon enter into the discussion as to the manner in which the Hydro contract was handled?

Hon. Mr. McKeough: No.

Mr. Deans: Neither one ever discussed the matter with you?

Hon. Mr. McKeough: As part of a general discussion, but I don't think they had anything to contribute because I don't think they knew anything about it. You'd have to ask them but I don't remember.

Mr. Deans: You don't recall?

Hon. Mr. McKeough: No.

Mr. Deans: Let me ask in particular did Mr. Dillon ever mention it to you?

Hon. Mr. McKeough: No.

Mr. Deans: You don't recall any contribution by him during the general discussion?

September 11, 1973
11.15 - 11.20 a.m.
M.R.

Hon. Mr. McKeough: No.

Mr. Deans: Thank you.

Mr. Chairman: Any other questions? Thank you
very much, Mr. McKeough, for being present.

Hon. Mr. McKeough: Thank you.

Mr. Chairman: You've joined an illustrious
circle.

I think we'll break now for 10 minutes,
if we may, and be back here by 11.30.

H- 2295 to follow

September 11, 1973

11.33 - 11.35 a.m.

M.R.

The committee reconvened at 11.33 a.m.

(Mr. Chairman: Mr. Cronyn I believe to be the

next witness. Ladies and gentlemen, I call the meeting to order and ask Mr. Cronyn if ~~he~~^{he} will come forward.

Mr. Eberle is his counsel and Mr. Eberle is at the counsel table. Mr. Cronyn, you have been sworn before so ~~the oath~~ that oath is still in effect.

I think we are ready, Mr. Shibley.

Mr. Shibley: Mr. Cronyn, you have already been sworn in these proceedings. Is that correct?

Mr. Cronyn: Yes, sir.

Mr. Shibley: Mr. Cronyn, I must tell you I have reviewed your evidence to date, ~~and~~ I put it to you that basic to your whole position before this committee throughout your evidence, and I'll read you the excerpts in a moment, is that at no time did you intercede on behalf of Ellis-Don respecting the obtaining of the Hydro head office building?

Mr. Cronyn: That is correct.

Mr. Shibley: And also basic to your position was that any communication with anyone referable to the Hydro head office building took place following the matter becoming public by the publishing of the questions tabled by Mr. Nixon on December 1, 1969.

Mr. Cronyn: No, I don't think that's ~~the~~ case.

Mr. Shibley: ~~the~~ with the possible exception of your discussion with Mr. Fleck having taken place in the latter part of November. Is that correct?

Mr. Cronyn: Yes, I think that I had said that I ~~was~~ felt relieved of any difficult position by the notice which I ~~gave~~...

(Mr. Cronyn)

~~Yes, I think that I had said that I was relieved of my original position because of the fact that, I guess, was the~~
end of August from what I gather. The only publication was the end of August that said that the contract was let.

Mr. Shibley: I want to review, more for the benefit of the committee and for yourself, I shouldn't have said that, your previous testimony in connection with those two aspects of the matter. It started earlier but we can go immediately to page 853-2, July 3, 1973. Have you got transcript with you?

Mr. Cronyn: Yes, I have.

Mr. Shibley: I'm moving immediately to your second attendance, Mr. Cronyn.

Mr. Cronyn: Second attendance?

Mr. Shibley: On July 3, 1973.

Mr. Eberle: Mr. Chairman, is there another copy of that transcript that I may have?

Mr. Chairman: Yes, we'll get one for you here in just a minute.

Mr. Cronyn: Page?

Mr. Shibley: Page 853-2, ~~xxxxx~~ and it starts:

"Mr. Shibley: Well, why, then, didn't that same circumstance motivate you to do something about it when Smith was telling you, in February of 1972, and July 14 of 1972, of the fact that he considered that the job was a setup?

"Mr. Cronyn: Because, Mr. Shibley, I told Mr. Smith, and I have told this group here a number of times, I was doing a government job and therefore was in no position to help Mr. Smith at all. I told him that at the beginning and he accepted it."

I take it by that you meant Mr. Smith, having been told that at the beginning, and I think you ~~xx~~ said you told him that as early as 1971 when he first broached the matter with you, that you told him that you could do nothing for him and he accepted it. Is that right?

Mr. Cronyn: That is correct.

Mr. Shibley: In the sense that he -

Sep. 11/73
11.35 to 11.40 am
fvk

Mr. Cronyn: When I say that I felt that he accepted it.

Mr. Shibley: Then it goes on:

"Mr. Shibley: But you mentioned that you had some responsibilities referable to Task Force Hydro and what I'd like to know is why you could sit there throughout the period February, 1972, until November of 1972 and say nothing to anyone respecting the Ellis-Don complaints?

"Mr. Cronyn: Well, that was just my - I guess - governing of my ethics, I suppose; that I was a director of Ellis-Don and I couldn't get involved in anything to do between Ellis-Don and the government."

Then, at page 855-1, a few pages along, about the middle of the page:

"Mr. Cronyn: Well, I think I have grasped his misunderstanding, or his lack of comprehension, of what I've been trying to say. After the contract was let, to bring up anything about Ellis-Don seemed perfectly in order for me. No one could possibly say that I was trying to get the job for Ellis-Don."

Then, at the bottom of that page:

"Mr. Cronyn: My purpose for raising the thing with Mr. Fleck was that we make sure that if the government, not just Hydro, the government ^{or} anybody else, is taking the developers' ~~xxx~~ proposal route that the method of doing this and the ~~parts~~ method of taking proposals was done in a very thorough, careful manner. Because if you don't, you run the risk of just what we are into now."

And then, again, at page 881-3, Mr. Deans was examining you and you said: Actually it starts back further on page 881-2.

"Mr. Deans: Five or six years. During that time would I be correct in assuming that Mr. Smith did, from time to time, talk to you about contracts ~~by~~ that he was entering into and difficulties that the company was having?

"Mr. Cronyn: At the directors' meetings there usually was a review of the jobs that were under way.

Sep. 11/73
11.35 to 11.40 am
fvk

(Mr. Shibley)

"Mr. Deans: How about outside of directors' meetings?

Was it a practice of Mr. Smith's to drop by in the summer time,
xxx for example, or to communicate with you by letter about contracts

"Mr. Cronyn: No. ^{" and so on.} ~~occasionally he would say to me:~~

~~"We've got a very good contract with Nova Scotia Electric"~~

~~and so on.~~

"Mr. Deans: Did he ever discuss any of the company's
difficulties in getting contracts with you personally?

"Mr. Cronyn: I don't know that I can identify any
specific situation other than the discussion about the tire plant
in Nova Scotia of New Brunswick. That was one that caused a good
deal of concern."

(Tape H-2297 follows)

Sept. 11/73
11:40-11:45 am
PLG

(Mr. Shibley)

~~Mr. Cronyn: I don't know that I can identify
any specific situation other than the discussion about the
time time plants to Nova Scotia or New Brunswick. That~~

~~was~~

~~and so on. XXXXXXXXXXXXXXXX~~

"Mr. Deans: Did you not think it unusual when Mr. Smith came to you and complained so vigorously about what he considered to be mistreatment at the hands of Hydro?

"Mr. Cronyn: No, I did not, sir.

"Mr. Deans: Even though he normally didn't do those things?

"Mr. Cronyn: I'm sure that there had been a situation comparable to it. It's the first time to my knowledge that he ever made a proposal as a developer for instance. The others were all fixed ~~contract~~ contract bids which you either get or you don't. That's fairly clear *and*, if you're the low bidder.

"Mr. Deans: You weren't, though, in the habit of having him call you up or drop you a note prior to that about any other contracts?

"Mr. Cronyn: No, sir. I can remember one. That was the Bank of Nova Scotia, where he felt he was the low bid and didn't get the job." ~~It~~ and so on.

"There were some times when he drew to the directors, or to my attention when he saw me.

"Mr. Deans: But the fact that he brought this to your attention was an unusual ~~occurrence~~ occurrence over the five years that you had been a director? It was unusual for him to approach you on a number of occasions about a particular situation and bring it to your attention?

"Mr. Cronyn: Yes. I can say it was unreasonable,...

Mr. Cronyn: That should have been unusual.

"~~Mr.~~ Mr. Shibley: "Unusual, but as I pointed out, this was the first time he ever made a developer proposal."

(Mr. Shibley)

And then again at Page 883-82x, Mr. Deans was continuing,
~~Mr. Deans: Max~~ about a quarter down:

"Mr. Deans: Did you never ask him why he was asking you, since you had indicated that there was nothing you could do about it?

"Mr. Cronyn: Right from the beginning, I told him that there was nothing I could do to help him in any way. His first request was, did I know whether the building was going to go ahead or not. I said I didn't know. There was no way that I could find out and no way that I could help him.

"Mr. Deans: From the conversations you had with him and what you can recall of the conversations, do you think Mr. Smith was concerned about opening up the contract to all of the developers or was he asking you to intercede on his behalf?

"Mr. Cronyn: No, I don't think he was asking me to intercede on his ~~behalf~~ behalf.

"Mr. Deans: ~~You~~ You think then that he was concerned that the contract appeared to be handled inappropriately and that other contractors weren't ~~given~~ given the opportunity?

"Mr. Cronyn: Yes ~~yes~~ "

Mr. Shibley: I ask you to note, Mr. Cronyn, that Mr. Deans asked you quite explicitly there, 'was he asking you to intercede on his behalf?' and your answer was "No, I don't think he was asking me to intercede on his behalf."

And then again at page 894-1, about half-way down:

"Mr. Shibley: Now both Mr. Deans and Mr. Bullbrook have attempted to get at this ~~because~~ because it is so key to your explanation for taking no action on the July 14 letter and no action respecting information provided you by Smith in February of 1972, and you did nothing until the contract was actually let, and thereafter felt that you were free to say something to Mr. Fleck, did you view the character of Mr. Smith's communications with you to be such that he was seeking an ~~advantage~~ advantage?

Sept. 11/73
11:40-11:45 am
PLG

(Mr. Shibley)

advantage emanating from your position with the government at that time?

"Mr. Cronyn: No, I did not, sir. I thought I had cleared ~~me~~ that up with him right from the beginning that I could do nothing to help him, and he understood that and accepted that."

Then on the next page, 894-2, about half-way down:

"Mr. Shibley: Now then when he raised the matter with you in February, did you consider that he was raising it with you to obtain an advantage or raising it with you in order to make you aware that something wrong was going on within Hydro?

"Mr. Cronyn: Well, he certainly wasn't raising it asking me to do anything.

And I would ask you to note that.

"He certainly wasn't raising it asking me to do anything.

"Mr. Shibley: So that with respect to the second part of what I asked you, his only purpose in your mind then was to bring to your attention the sloppy job?

"Mr. Cronyn: Or to register his beefs about the way the thing was being handled.

~~"Mr. Shibley: And from the summation of the letter of July 14th, do you view that communication with you to be of the same~~

Tape H 2298 follows

Sept. 11/73
11.45 to 11.50 am
DT

(Mr. Shibley)

~~"Doesn't say the case is being handled."~~

"Mr. Shibley: And then the communication of the letter of July 14th, do you view that communication with you to be of the same ilk, not to receive some advantage from you but rather to bring home to you areas of complaint?"

"Mr. Cronyn: The same ilk."

"Mr. Shibley: And that cuts across the whole of the communications between Mr. Smith and yourself? Is that correct?"

"Mr. Cronyn: Yes, sir."

I ask you ^{to} note that part, Mr. Cronyn. "And that cuts across the whole of the communications." And so your basic ~~post~~ posture, I put to you, Mr. Cronyn, on this attendance, of your giving evidence was that Smith had accepted from the outset of your telling him you could do nothing for him, the fact that he could not seek your intercession on his behalf? Is that so?

Mr. Eberle: Mr. Chairman, may I interject here. It seems to me that it's not a question of Mr. Cronyn's posture, but he has been asked questions which Mr. Shibley has read rather extensively from the record and his answers are on the record.

Mr. Shibley: Well, I want Mr. Cronyn -

Mr. Eberle: It is not a question of posture at all --

Mr. Shibley: Well, I want --

Mr. Eberle: It is a question of the evidence that he's given.

Mr. Shibley: I want Mr. Cronyn to have the opportunity to comment upon that earlier testimony in the light of subsequent evidence that has been produced before this committee, Mr. Chairman. At the moment all I am asking ~~you about~~ Mr. Cronyn is that your evidence, taken in its totality, as I have read it to you, that's not all the evidence, but those are the salient portions, ~~was~~ that Mr. Smith certainly wasn't raising the topic of the Hydro building, asking you to do anything ~~for~~ for him?

Mr. Cronyn: That's correct.

Mr. Shibley: And that so far as any communications you had had with him, that he certainly wasn't asking you to do anything for him?

Sept. 11/73
11.45 to 11.50 am
DT

Mr. Cronyn: That's correct.

Mr. Shibley: That he had not asked you to intercede for

him?

Mr. Cronyn: That is correct.

Mr. Shibley: Now, then, I want you to ^{turn} ~~turn~~ with me to

page 836-2 which is June 28 and you will remember. I am sorry, Mr.

Cronyn, I will wait for you.

Mr. Cronyn: Is this one of my -

Mr. Shibley: Yes, it is June 28th, in the afternoon---

I am sorry, it is 1 o'clock, 1 to 1.05. I guess it was the very end
of the morning session.

Mr. Cronyn: The page again, please.

Mr. Shibley: 836-2.

Mr. Cronyn: Yes.

Mr. Shibley: You will remember that morning, Mr.

Cronyn, there was prior to this point of time a great exchange as
to lack of notice and ~~opportunity~~ opportunity to you to prepare and a
request for an adjournment to enable you to prepare by reviewing your
file and ~~the~~ transcript and so on, and at the end of the ~~the~~ exchange
somebody made a motion to adjourn at lunch-time that day to afford
you that opportunity, and the chairman said this to you at page
836-2: "I am going to take it that the motion to adjourn has been
carried, Mr. Cronyn. You now have notice to bring with you not only
any documents or any items that have already been produced, but to
bring anything else with you that may be material in the way of documents
or evidence, and to be here yourself next Tuesday morning at 10
o'clock. I am going to take it that the motion for adjournment has
carried."

And then, when we resumed on July 3rd at 837-1, at the
top of the page, Mr. Shibley, the very first question:

"Mr. Cronyn, please. Mr. Cronyn, I ask you now to
produce all the documents in your possession of whatever nature or
kind which in any way relate to the issues before this committee."

~~Mr. Everle intervened and says said you had a --~~

(2299 to follow)

H - 2299 - 1

(Mr. Shibley)

~~in any way relate to the issues before this committee~~

Mr. Eberle intervened and said you had a statement to make and I would like to read that statement again for the benefit of all.

You thanked the committee for the adjournment and you go on:

"Having read the evidence carefully" - this is mid-page at ~~828~~ ⁸³⁷ - 1 - "I have become aware of the six questions which the committee is concerning itself with. I think I have a better understanding of the matters that the committee is interested in.

" From the very ^{first} contact by Smith I took the stand that there was nothing I could do in the way of helping him in view of the job I had with the government. He recognized and accepted that position. It therefore became a matter of very small import to me, and because of my considerable involvement in numerous companies and my involvement in the Committee on Government Productivity and Task Force Hydro, I relegated the whole matter to a fairly low priority. I think most of the gentlemen here who have many matters on their minds practice the same custom of only concerning themselves or worrying about things that you can do something about.

" In fact it became a purely peripheral matter. I kept no records of my discussions and filed no copies of any correspondence. I had a search made of my files on Friday last and there is no copy of the 14th of July letter or any other relevant correspondence. It is impossible for me to pinpoint the timing or content of conversations with Smith because of the frequency of contact with him, both businesswise and socially, and the low priority I placed on the subject.

" At the time of receiving the letter of the 14th of July it appeared of no significance to me. It didn't ask me to do anything"...

^{ask you to}
I ~~should~~ note that was part of your statement. "It
A

H - 2299 - 2

(Mr. Shibley)

didn't ask me to do anything and there was nothing I could do in any case. I did not respond to it, and to the best of my recollection threw the letter out. The significance of the letter to me was no more than the various discussions with Smith, which were for the most part casual and impromptu.

"As you know I was given very short notice when I was first called to testify: no written material or terms of reference, etc. presented or described^{to me}. When detailed questions for which I had no time to prepare were presented, the letter simply did not come to mind. The contents of the letter make it clear that there would be no reason for me to disclose the letter, and I would not do so in any event".

Then on the next page - 837 - 3:

"Mr. Shibley: Mr. Cronyn, following your review of the evidence, and your in-depth examination of your files, did you come up with any documents which are in any way relevant to the issues that you say you now understand?

"Mr. Cronyn: No, I did not, sir.

"Mr. Shibley: None at all?

"Mr. Cronyn: Not at all."

~~Mr. Shibley:~~ And to be completely fair I will read you two more excerpts from the evidence at 857 - 1 about three-quarters of the way down:

"Mr. Shibley: Fine. Had you prior to this hearing had conversations with Mr. Smith respecting the evidence that he would give and you would give at this hearing?

"Mr. Cronyn: No, I did not, sir.

"Mr. Shibley: Did you not?

"Mr. Cronyn: If you remember I didn't see him or talk to him after he was called".

Then at 893 - 2 Mr. Gaunt was asking you questions and he asked you these questions and you made these answers - about

H - 2299 - 3

(Mr. Shibley)

a quarter of the way down:

"Mr. Gaunt: In searching your memory, do you have any recall as to whether there is any other written material which you have received, referable to Hydro, from any source, which you may have thrown out?

"Mr. Cronyn: Referable to Hydro? That's -----"

~~He says~~

Tape H - 2300 follows

September 11, 1973
11.55 a.m. - 12.00 noon
M.R.

(Mr. Shibley)

~~which you may have thrown out~~

~~"Mr. Cronyn: Referable to Hydro? That's..."~~

"Mr. Gaunt: All right. Let's be more specific.

Has there been in your memory after, I'm sure, thinking about these matters over the weekend, did you receive at any time during the period in question, any written material referable to the letting of the contract by Hydro which you may have thrown out?

"Mr. Cronyn: I have no recollection of receiving any or throwing any out."

Now, Mr. Cronyn, yesterday Mr. Smith gave evidence — I don't know whether you've had a chance to read Mr. Smith's evidence of yesterday. Have you?

Mr. Cronyn: I've had a chance to skim it.

Mr. Shibley: Yes. And you know that he gave testimony yesterday to the effect that on the long weekend, which was the weekend during which the committee adjourned on Thursday noon to permit you to make your review of documents, that on that weekend Mr. Smith says that he attended upon you at the cottage with his copy of a letter dated April 14, 1972, Exhibit 232, which I now produce to you.

Do you recognize that letter, Mr. Cronyn?

Mr. Cronyn: I recognize it as the letter which he showed to me on July 1.

Mr. Shibley: Yes. And have you the original of that letter?

Mr. Cronyn: No. I have absolutely no recollection of ever receiving this letter. In fact, I really don't think I ever did.

Mr. Shibley: I see.

You have no recollection of it but you don't think you got it?

Mr. Cronyn: I don't think I ever got it because I have completely no recollection of this letter at all. Other than from the July 1st incident where he showed me this letter.

September 11, 1973
11.55 a.m. - 12.00 noon
M.R.

Mr. Shibley: So that on the 1st of July, in any event, Mr. Cronyn, he did show you this letter?

Is that correct?

Mr. Cronyn: Yes he did.

Mr. Shibley: And did you have a discussion with Mr. Smith respecting the production of that letter to this committee?

Mr. Cronyn: No. There was no discussion. Mr. Smith simply told me that he had decided not to produce the letter.

Mr. Shibley: Yes?

Mr. Cronyn: And ~~agreed~~ as it was a letter that he ~~was~~ apparently had written and it was a letter in his possession, I made absolutely no comment.

Mr. Shibley: Are you saying that when he said that you agreed with him that the letter should not be produced, that that is untrue?

Mr. Cronyn: I did not agree. I said nothing. Now he may have assumed because I said nothing that I agreed. But I neither agreed or disagreed because I felt it was completely his decision and in fact he had already made it.

Mr. Shibley: I see. You did read the letter on that occasion?

Mr. Cronyn: No. I only glanced at it.

Mr. Shibley: Did you notice the postscript in the letter?

Mr. Cronyn: No, I don't believe I really did.

Mr. Shibley: I see. He said he gave it to you to look at, I think, and ...

Mr. Cronyn: He did. And I took it very quickly, took a look at the thing and said, "I've never seen that letter before." No recollection of it."

Mr. Shibley: I see.

Mr. Cronyn: I didn't read the whole thing carefully as I have an opportunity to do now.

September 11, 1973
11.55 a.m. - 12.00 noon
M.R.

Mr. Shibley: In any event, Mr. Cronyn, when you came back to give your evidence, as you did on July 3 and I've made references to the various questions that were put to you respecting documentation, you were aware of the existence of Exhibit 232, were you not?

Mr. Cronyn: Yes. I was aware of ~~this~~ this document.

Mr. Shibley: Yes. And were you aware ~~that~~ of Mr. Smith's intentions not to produce that letter to this committee?

Mr. Cronyn: Yes. I ~~was~~ was aware.

Mr. Shibley: Were you aware that the letter was relevant to the issues before this committee?

Mr. Cronyn: Well, I don't -- I guess I'm not any judge of what is relevant or not relevant.

Mr. Shibley: Well, in that connection, we had already had a previous experience with the July 14th letter. You remember that?

~~Mr. Cronyn: Yes, I do.~~

~~Mr. Shibley: And, just in that connection, I'd like to read to you from Page~~

Sept. 11/73
12.00 to 12.05 pm
DT~~(Mr. Shibley)~~~~You come on that?~~

Mr. Cronyn: Yes, I do.

Mr. Shibley: And just in that connection, I would like to read to you from page 860

Mr. Cronyn: I got into no discussion with Mr. Smith, whether it was relevant or wasn't relevant. That was his decision, what he did with it.

Mr. Shibley: Well, I am talking about your decision as to whether the document was relevant, Mr. Cronyn. Mr. Cronyn, I

Mr. Eberle: Excuse me, Mr. Chairman. Mr. Cronyn has not said he had made any decision as to whether it was relevant or not.

Mr. Bullbrook: Well, I think, Mr. Chairman, if I may intercede and I hate to use that word, I think our counsel is about to show that a decision had been made in the past as to the relevancy of documents by this witness.

Mr. Shibley: Mr. Cronyn, if you will look at the transcript at page 860-1 and following, you will see that Mr. Walker had undertaken a line of examination with you at that time, and I won't bother with it in detail but he talks about what you did with your mail, your Labatt mail, as well as your personal mail, etc. ~~and~~ At page 860-3, ~~you~~ ^{you} said at the top of the page

Mr. Cronyn: 860?

Mr. Shibley: 860-3. "This letter came in." He is talking about the July 14 letter. "It was just a summary, if you like, of some of his feelings about the way he was being treated; there was nothing new in it;" ~~some~~ This is your answer. "He didn't ask me to do anything; I did nothing." You again repeated that phrase. "He didn't ask me to do anything. The letter meant nothing to me."

"Mr. Walker: Is it fair to say that you basically treated it as insignificant? Is that a fair comment?"

"Mr. Cronyn: I would say that is a fair comment."

"Mr. Walker: Looking back at it today, with today's perspective, would you consider it as insignificant?"

"Mr. Cronyn: No, I would not."

And then on page 861-3, Mr. Walker continued his

Sept. 11/73
12.00 to 12.05 pm
DT

(Mr. Shibley)

questioning. He was making comment actually toward the bottom of the page, and I am only reading this to make it clear ~~there~~ what view the members of this committee took as to relevancy.

"Mr. Walker:" (about two-thirds down) "from a consideration point of view? Now, Mr. Cronyn, in my reading of Thursday's transcript, it appeared to me that some people around the table thought or inferred that there might have been a suppression of evidence or a withholding of material evidence."

Mr. Cronyn: Where are we now, sir? I am kind of lost.

Mr. Shibley: 861-3, two-thirds of the way down the page. Mr. Walker says: "it appeared to me that some people around the table thought or inferred that there might have been a suppression of evidence or a withholding of material evidence. That was the feeling that I got in reading the transcript."

"Mr. Renwick: Mr. Chairman, I don't think there was anything from around the table that had to do with the suppression of evidence."

"Mr. Walker: Well, this is my feeling, Mr. Chairman, in reading the transcript. I think if the members beside me re-read it, they will detect that feeling."

"Mr. Deans: We were here."

"Mr. Renwick: We were here."

"Mr. Walker: I appreciate that but, nevertheless, I think you will come to that feeling if you have a chance to see the actual ~~words~~ words, even though you heard them."

"Mr. Renwick: I've seen the actual words and I was also here and there was no indication by anyone around the table, unless you care to name who the person was, of any such suggestion at that meeting."

And then on the next page, finally Mr. Walker said, at page 862-1, about the middle:

"Mr. Walker: Well, my inference, Mr. Chairman, probably came from the line of questioning offered by counsel which at times suggested that counsel was anxious that Mr. Cronyn would not have remembered this particular letter."

Sept. 11/73
12.00 to 12.05 pm
DT

(Mr. Shibley)

Mr. Shibley: We were talking about the July 14 letter.

Now, perhaps I have interpreted the line of questioning improperly but, however, that is what was in my mind. Allow me, at least, to clear my own mind if not possibly some of the others."

Mr. Shibley: Now, Mr. Cronyn, you sat and heard Mr. Walker make those observations, did you not?

Mr. Cronyn: Yes, I did.

Mr. Shibley: And you realized that even with respect to the July 14 letter that the committee was concerned that the delay in producing that document and the circumstances of its production

~~could be interpreted~~

(H-2302 to follow)

Sept. 11/73
12:05-12:10 pm
PLG

(Mr. Shibley)

~~under the circumstances that document and the~~
~~circumstances, this production~~ could be interpreted as a
suppression of material evidence. Did you ~~know~~ ^{not?}

Mr. Cronyn: I don't know whether I did or not
on that point. It didn't really strike me as a great point.

Mr. Shibley: I see. In any event, when Mr.
Smith produced that letter to you on July 1st and you were
thereafter two days later giving your evidence, did it not
occur to you that this committee would view your failure to
produce that letter or at least make reference to it ~~was~~
^{ing} amount to a suppression of evidence?

Mr. Eberle: Mr. Chairman, may I interject again
and make my position on this matter very clear? That is, that
in my respectful submission there is no question of suppression
of evidence. I think what my friend Mr. Shibley is getting
at is suggesting indirectly that there may be some obligation
on a witness to volunteer matters, and in my respectful ~~view~~
view, as a matter of law, there is no such obligation on any
witness.

Mr. Shibley: Well, Mr. Chairman, if I may answer
that, I thought the questions and answers that I had put to the
witness at the outset, I thought the question that Mr. Gaunt
in particular had put to the ~~witness~~ ^{witness} which was very
incisive, ~~was~~ 893-2...

Mr. Eberle: Yes, Mr. Chairman, I am fully aware of
that.

Mr. Shibley: I think those questions, Mr. Chairman,
unequivocally put to the witness the obligation to reference
the letter of April 14, ~~1972~~ 1972.

Mr. Eberle: Mr. Chairman, I respectfully disagree
and most seriously, the question was very carefully worded to
ask, ~~for~~ did he receive at any time during the period
in question, any written material which ~~he~~ ^{she} may have thrown
out. Mr. Cronyn's evidence is quite clearly that he did not
receive to the best of his recollection, the letter that has now

(Mr. Eberle)

been put before him, and if he didn't receive it he certainly couldn't have thrown it out. My respectful submission Mr. Shibley, is quite misinterpreting the application of that question.

Mr. Deans: Mr. Eberle, are you suggesting to us, I want to be clear, that unless we ~~have~~ happen to know exactly what questions to ask, that we are not going to be told all of the facts pertaining to the matters of the inquiry into Ontario Hydro?

Mr. Eberle: Mr. Chairman, as I have already said, my position is...

Mr. Deans: Well, is ~~that~~ that what you are saying?

Mr. Eberle: Perhaps you will give me an opportunity to answer, which I am trying to do in the best and only way that I can. As I have already said, my position is that there is no obligation on a witness to volunteer information. He is required to answer questions and he has done so.

Mr. Deans: And if he has information that he knows is related directly to the Hydro inquiry and he keeps it to himself, that is his business and we are not entitled to know.

Mr. Eberle: I wouldn't put it in exactly those words, but...

Mr. Deans: No, I am sure you wouldn't.

Mr. Eberle: ...but you are making it -- because I think, sir, that you are making a judgment call on it. I am trying to look at this as a matter of what a witness's responsibilities and obligations are.

Mr. Bullbrook: Well, if I may, Mr. Chairman, I don't think my colleague is making a judgment at all. I wanted to understand from a point of view of the law as you understand it, are you saying, in effect, that because of the particular wording of Mr. Gault's question, ~~and~~ and the other questions that were put by others and counsel to Mr. Cronyn previously, that he had no obligation under the law to bring to our

Sept. 11/73
12:05-12:10 pm
PLG

(Mr. Bullbrook)

attention the information that he had received from Mr. Smith on that weekend?

Mr. Eberle: Yes.

Mr. Deans: Well, I want to ask Mr. Cronyn a question.

Mr. Chairman: Well, just a moment. With this matter, Mr. Eberle, as you know, this is an inquiry...

Mr. Cronyn: You'd never know it.

Mr. Chairman: We have been ~~much~~ criticized...

Mr. Bullbrook: Now wait, we don't have to be ~~much~~ subjected to that. Maybe counsel will tell us *why*.

Mr. Chairman: We have been criticized for the length of time ~~we~~ have taken, and this is the very reason, I suppose, it has taken this length of time, because evidence that we require to try to get to the truth of matters has not been produced. Now, it may be that the evidence that has been withheld from time to time or has not been produced voluntarily will not be too relevant in our decisions, but it is certainly...

Mr. Eberle: I think you said that yourself ~~yesterday~~ yesterday, Mr. Chairman.

Mr. Chairman: ...but it ^{has} certainly made it more difficult for us to proceed, it has been costly to the province, and very many other things that we as a committee can certainly object to.

Tape H 2303 follows

September 11, 1973
12.10 - 12.15 p.m.
M.R.

(Mr. Chairman)

~~so the province of the committee is to say that we, as a committee, are certain that we have~~
Mr. Eberle: Well, Mr. Chairman, there is one facet of this matter that has been bothering me and I think from what you have just said it impels me to say something about it. It would appear from Mr. Shibley's remarks on the record yesterday that before he interviewed Mr. Smith on Friday last, he had knowledge of this letter, and it would be very interesting to me to know where he got that knowledge. It seems to me it can only have come from one source and that was Mr. McAuliffe, and I wonder why Mr. McAuliffe held that back from Mr. Shibley until presumably last Friday or shortly ~~xxxx~~ before.

Mr. Chairman: Well, I'm not so sure that it was held back that long. I think Mr. Shibley has acknowledged that this letter might have been in existence for some time.

Mr. Eberle: Well, in that case then, I must say I question his procedure as committee counsel in holding back for this length of time, that matter.

Mr. Bullbrook: What would you have suggested that Mr. Shibley do, if on the basis of a rumour¹ and I say if, he had heard that there was another letter in the context of the questions that have been put to the witness Mr. Cronyn?

I want to say to you, sir, you don't want us to make judgments, Mr. Eberle, and we don't want to, but I try, as a reasonable person, to conclude on the evidence certain things.

And weighing a rumour against the responses of Mr. Cronyn to the previous questions I'd be inclined to believe that there was no other letter. And I'd like your comment on that. And I want to say to you, Mr. Eberle, if I may, just a personal comment. When you make the comment that you wouldn't know this was an inquiry, I say ~~yes~~

Mr. Chairman: I don't think Mr. Eberle made that. That was Mr. Cronyn.

September 11, 1973
12.10 - 12.15 p.m.
M.R.

Mr. Eberle: I didn't say any such thing, Mr.

Bullbrook.

Mr. Bullbrook: I'm sorry. Well, I'm sorry, Mr.

Eberle.

Mr. Eberle: And I didn't hear what Mr. Cronyn said.

Mr. Bullbrook: ^{and} I apologize to you.

Mr. Chairman: It may be that Mr. Cronyn thinks that an inquiry is just accepting what the first witness says.

Mr. Bullbrook: Well, I'm sorry. Let the record be clear then. I thought it was Mr. Eberle who said that. I'm most pleased that it wasn't he who said that.

Mr. Deans: I thought it was Mr. Eberle too.

Mr. Bullbrook: It wasn't - it was apparently Mr. Cronyn. But you see the weight that we have to give to certain matters and I must say to you, sir, that on the basis of your clients' testimony, given under oath previously, no matter whether they can be rationalized as directly responsive to the question, I must ~~say~~ say that I would ~~disbelieve~~ have dispelled from my thought the existence of another letter.

Mr. Eberle: You asked me to reply to that, Mr. Bullbrook, it seems to me that ^{since} Mr. Shibley was able to ask Mr. Smith last Friday morning, "Where is the letter of April 19, 1972?" on that occasion.

Mr. Bullbrook: ~~Shibley~~ He didn't know.

Mr. Eberle: I think the record reads that's what he started off his interview with Mr. Smith, by asking that question.

Mr. Shibley: ... inaudible ...

Mr. Eberle: And that he could have asked that of Mr. Smith at any time earlier in this matter when he was giving his evidence.

Mr. Chairman: Mr. Eberle, I'm just going to read to you from our charge from the House - "And that the Select Committee have full power and authority to employ counsel and such other personnel as may be deemed advisable and call for

September 11, 1973
12.10 - 12.15 p.m.
M.R.

~~(Mr. Chairman)~~

persons, papers and things, and to examine witnesses under oath and the Assembly doth command and compel attendance before the said Select Committee of such persons and the production of such papers and things as the committee may deem necessary for any of its proceedings and deliberations for ~~the~~ which purpose ^{Honourable the} ~~the~~ Speaker may issue his warrant or warrants."

Now, we have had some discussion on the effect of a letter from the clerk, and it was the Clerk of the House's opinion that that letter amounted to a demand to bring forward these things.

Now,

Mr. ~~Mr.~~ Eberle: Well, Mr. Chairman,

Mr. Chairman: Now just let me finish, Mr. Eberle.

Mr. Eberle: Certainly, sir. I didn't mean to interrupt. I thought you were finished.

Mr. Chairman: And as far as holding an inquiry, we can ask people to come forward and just ask them their opinion of what happened here and do no cross-examination or no questioning at all, but in my mind, that is not what we were charged to do. And I commend the counsel for the fact that he has taken the time to go beyond just the original evidence that was produced. If we had just relied on original evidence without any cross-examination at all, I think we could be condemned for not holding a proper inquiry.

Now, we are charged with the public duty to inquire and this, I'm afraid, requires the cooperation of many people and I'm sorry to say that that cooperation has not always been forthcoming. We don't know what evidence there may, and if responsible citizens or citizens don't produce the evidence that will be of help to us we can't do our job well. We can't do it expeditiously. Now if the cooperation had been given by everybody concerned...

H - 2304 - 1

(Mr. Chairman)

~~will be of help to us, we can't do our job well we can't do~~

~~it expeditiously.~~ Now if the co-operation had been given by everybody concerned in this matter I think we would have finished our task some time ago and we would not have been involved in the length that it has taken, and I must say, Mr. Eberle, that I am not too sympathetic with the position that you are putting forward.

Mr. Eberle: Excuse me for just a moment, Mr. Chairman?

Mr. Chairman: Yes.

Mr. Eberle: Due to the physical relationship here, it is difficult for me to ----I take it, Mr. Chairman, that you feel that this discussion has gone on long enough and you don't really want a reply from me, do you?

Mr. Deans: No, I don't think it has gone on long enough and I want to refer you, Mr. Cronyn, to page H 837 - 2, to the final sentence in your own statement, and you are referring to the contents of the letter of July 14th or 16th, ^{the date} I can't recall; "The contents of the letter make it clear that there will be no reason for me to conceal the letter and I would not do so in any event" and you were referring to the letter of July.

I want to ask you, knowing the contents of the letter of April, why you then didn't take the same position with regard to that letter?

Mr. Cronyn: Because that was a letter I had absolutely no recollection of ever receiving and I question that I ever did receive it. It is quite different from the July 14th letter which I recollected receiving.

Mr. Deans: Well may I ask you, would it not have made more sense to have revealed to the committee that you had had it brought to your attention that there was such a letter, though you personally did not recall receiving it?

Mr. Cronyn: I thought that was entirely up to Mr. Smith.

H - 2304 - 2

Mr. Shibley: Mr. Cronyn, you became aware of the fact that Mr. Smith, Mrs. Shuttleworth, Mr. Grant, none of them, produced that letter to this committee. You became aware of that?

Mr. Cronyn: Well after reading the testimony yesterday.

Mr. Shibley: Mr. Chairman, I can't leave Mr. Eberle's comments, because I remind this committee of the repeated questioning that I ~~was~~ directed to all four witnesses, Mr. Cronyn, Mr. Smith, Mrs. Shuttleworth and Mr. Grant, all to the question of whether there was any other documentation.

Now I thought I had covered the subject like a blanket. I think this committee should also know that last week, on Wednesday, Mr. Bell established communication with Mr. Eberle at a point of time when I had not yet obtained the document, nor did I even know that it still existed.

Mr. Cronyn: Pardon, who?

Mr. Shibley: On Wednesday last Mr. Bell, my associate, communicated with Mr. Eberle and asked for a meeting with Mr. Cronyn, the purpose of which was to put to Mr. Cronyn, "Was there such a letter?" Mr. Eberle's position was that unless he knew the subject matter of the conference he would not attend such a meeting. I attempted to reach him and I think he met me for the next two days and on Friday, by the time I did establish communication with Mr. Eberle, I had that morning, and only then, interviewed Mr. Smith to the same effect, and only then received the letter itself, and I must say much to my delight he actually had his copy of the letter which I until then could not know whether it had been destroyed or not, and that same afternoon produced the letter to Mr. Eberle.

So any inference that Mr. Eberle would like to draw from the circumstances of the timing of that evidence is quite incorrect, and I say this to you also, Mr. Chairman, that I am not prepared to have Mr. Eberle make comments which really are a distraction from the real question before the committee. I suggest to this committee ~~that~~

Sept. 11, 1973
12.15-12.20 p.m.
M.F.

H - 2304 - 3

(Mr. Shibley)

through you, that it is no answer to say, "Why didn't Mr. Shibley ask Mr. Smith about that letter earlier?" I had my own problems as to proof; I had my own problems as to allegations of rumour and responding to the lifting of eyebrows and winks, and without something a lot more firm I was not prepared to embark upon evidence before this committee. I got that firm evidence on Friday.

Tape H - 2305 follows

~~_____~~
I think the Chairman has put it quite correctly.

"Mr. Cronyn, you now have notice to bring with you, not only any documents, any items that have already been produced, but to bring anything else with you that may be material in the way of documents, or evidence."

"Mr. Shibley: Produce all the documents in your possession, of whatever nature or kind, as they relate to the issues before this committee."

When you gave your evidence on July 3, the letter of April 14 surely must have been in your mind. Is that not so?

Mr. Shibley: Mr. Smith told you he had sent it to
you.

Mr. Shibley: And just because you had no recollection of receiving it did you consider that a proper premise for not bringing ⁱⁿ the letter to the attention of this committee?

Mr. Shibley: And sitting still while you knew three other people were failing to bring to the attention of the committee a document in their possession?

Mr. Eberle: Mr. Chairman, there is no suggestion of the letter.

Sep. 11/73
12.20 to 12.25 pm
fvk

Mr. Shibley: I beg your pardon?

Mr. Eberle: Mr. Cronyn wasn't here during their evidence. It's not a question of sitting still while somebody else is giving evidence.

Mr. Shibley: Mr. Cronyn, did you not say earlier -

Mr. Eberle: He said he ~~wasn't~~ learned by reading yesterday's transcript.

Mr. Cronyn: I ~~wasn't~~ wasn't aware that either of the other two ~~wasn't~~ knew anything about that copy of the letter. How would I know that?

Mr. Shibley: Mr. Cronyn, I'd like to understand the combined responses of you and your counsel in respect of your awareness of the fact that Mr. Smith had not produced that letter.

~~xxxxxxxxxxxxxxxxxxxx~~

Mr. Cronyn: How would I be able to -

Mr. Shibley: Are you suggesting -

Mr. Cronyn: I didn't know anything about Mrs. Shuttleworth, or the other one's knowing about it.

Mr. Shibley: All right. Then you did become aware of the fact that Smith had not produced that letter some time earlier? Were you not?

Mr. Eberle:

Earlier than what, Mr. Chairman?

Mr. Cronyn: ~~Earlier than what, Mr. Chairman?~~ *On* ~~July 1.~~

Mr. Shibley: Yes. I'm talking about after, when he resumed testimony also on July 3.

Mr. Cronyn: Yes, that's ~~was~~ correct.

Mr. Shibley: You ~~were aware~~ were aware ~~that~~ he went into the ~~the~~ witness box and he never produced it that day?

Mr. Cronyn: That's ~~was~~ right.

Mr. Shibley: And you continued to be aware that that document had never been produced to this committee?

Mr. Cronyn: That's correct.

Mr. Shibley: And at no time did you see fit to come forward and say: "There is another letter in Smith's possession?"

Mr. Cronyn: That's correct.

You didn't
Mr. Shibley: ~~I~~ consider that the questions that have^d been put to you, and to him, ~~have~~ imposed any obligation upon you in that regard?

Mr. Cronyn: No, I did not.

Mr. Shibley: I see. Mr. Smith testified that, on that same Thursday, I'm sorry, on the Thursday before the July 14 letter was produced, he had some recollection. He said that he was concerned^F about the confusion about what he had ~~said~~ said to McAuliffe. Did he discuss that confusion with ~~me~~ you on the weekend, in the interval between June 22 and June 25, when this committee resumed?

Mr. Cronyn: No, he did not, sir.

Mr. Shibley: He never discussed that with you?

Mr. Cronyn: ~~He never~~ No. I happened to be with him when he came up to you before I testified and said he had some other thought, or some other name, and at that point, you said: "Well, let's not bring anybody ~~name~~ else into it unless it's material."

Mr. Shibley: That's right. And did you pursue it though, ~~as~~ as to any further documents?

Mr. Cronyn: No, I did not. I didn't see him over that weekend at all.

Mr. Shibley: I'm talking about the whole of the interval Friday, Saturday, Sunday, Monday; over that weekend, apparently, the July 14 letter was produced.

Eberle:
Mr. Cronyn: I'm a little confused, Mr. Chairman. Which weekend are we talking about?

Mr. Shibley: That's the weekend before the long weekend.

Eberle:
Mr. Cronyn: The weekend before the long weekend?

Mr. Shibley: Yes, when the July 14 letter came to the surface. Do you remember that?

Mr. Cronyn: I can remember it coming to the surface, certainly, *the following week.*

Mr. Shibley: Did you have discussion over that

Sep. 11/73
12.20 to 12.25 pm
fvk

(Mr. Shibley)

weekend with anyone respecting Hydro head office?

Mr. Cronyn: No, I did not, sir.

Mr. Shibley: Were you in London that ~~week~~ weekend?

Mr. Cronyn: I was either in London or Grand Bend,

I can't remember.

~~Mr. Shibley: But you say you had nothing to do with
the production of the July 14 letter?~~

(Tape H-2306 follows)

(Mr. Cronyn)

~~Mr. Cronyn: I am not asking about solicitor-client communications.~~

Mr. Shibley: But you say you had nothing to do with the production of the July 14 letter?

Mr. Cronyn: Nothing at all.

Mr. Shibley: Did you, on the long weekend, referable to the April 14 letter, discuss that letter with any other person?

Mr. Cronyn: No, sir.

Mr. Shibley: Just with Smith.

Mr. Cronyn: That is correct.

Mr. Shibley: You never took it up with anyone else?

Mr. Cronyn: No one else.

Mr. Eberle: Excuse me Mr. Chairman, this may be, it seems to me ^{to me} this is the first time this has come up. I hope that Mr. Shibley is not by phrasing a question broadly like that, "discuss with anybody" and I just want to put my position about this clear on the record, in case it should come up again, that he is not intending to ~~inquire~~ inquire into any communications ~~with~~ that Mr. Cronyn may have had with his solicitor ~~and~~ any communications coming the other way from a solicitor to Mr. Cronyn.

Mr. Shibley: I am not asking about solicitor-client ~~and~~ communications.

Mr. Eberle: I just thought that we should perhaps -- some of the members of the committee might not be aware of that, although I know Mr. Shibley is and didn't think he was inquiring as to those things.

Mr. Shibley: What I want to know is, did you on the long weekend, have discussion with anyone referable to the proceedings of this committee?

Mr. Eberle: I think he has already said Mr. Smith.

Mr. Shibley: Let him ~~say~~

Sept. 11/73
12:25-12:30 pm
PLG

Mr. Eberle: Mr. Smith.

Mr. Shibley: Anyone else?

Mr. Cronyn: Well, when you say, referable to the proceedings, it may well have been that over the weekend there were people who we visited with or talked with who discussed the proceedings that were going on in general terms. Obviously everybody was

Mr. Shibley: Well, who did you have discussion with over that weekend?

Mr. Eberle: Surely, Mr. Chairman, Mr. Shibley isn't inquiring into social casual conversations?

Mr. Shibley: Come now, Mr. Chairman, I have a purpose.

Mr. Eberle: I mean, is he or isn't he? I don't know. It seems to me it has gone very far afield.

Mr. Chairman: Well, let the question remain insofar as not casual visitors to the house but people involved in governmental circles or people involved with this inquiry, as opposed to casual visitors at the home.

Mr. Cronyn: Nobody in that category.

Mr. Shibley: I want to be clear on that. You say you had no conversations over that weekend with anyone connected in any way with government?

Mr. Cronyn: That is correct.

Mr. Shibley: Now then,

Mr. Bullbrook: Before you leave that, I want to express Mr. Chairman, my lack of understanding of the reasoning behind the response of the witness to your order to him. When this letter was produced to you that is now Exhibit 232, Mr. Cronyn you say you scanned it briefly. You recognized the contents as I take it being a letter from Mr. Smith directed to you, with respect to the Hydro head office building? Did you?

Mr. Cronyn: Yes. Yes.

Mr. Bullbrook: Did you consider that that would be

(Mr. Bullbrook)

material to the purposes and obligations of this inquiry?

Mr. Cronyn: Well, I seemed to have been so wrong in my views of ~~material~~ what is material and relevant, I don't ~~seem~~

Mr. Bullbrook: Well, sir, I would prefer ~~you~~ not to have you judge ~~your~~ your own ability, because I know that from the comments you have made you don't have a high regard for this inquiry in any event. I am interested in knowing what was in your mind at that time.

Mr. Cronyn: What comments did I make?


Mr. Bullbrook: Well, I think you just said, "if you can call this an inquiry." In any event.

Mr. Cronyn: ^{That} ~~It~~ had nothing to do with the regard for the committee.

Mr. Bullbrook: Well, let us continue if we can, because I must say, sir, ~~as~~ that I regard this as extremely important to us, especially if I might say, with respect to our evaluation of other evidence. ~~I want to~~ When you were produced with this letter, it goes without saying from your response that you recognized that it was a letter from Smith to you with respect to the Hydro building. Did you make any judgment as to whether it would be material to our deliberations?

Mr. Cronyn: No, I made no judgment at that time, as I have already said.

Mr. Bullbrook: But you had previously told us that you made a judgment with respect to the



Tape H 2307 follows

Sept. 11/73
12.30 to 12.35 pm
DT

(Mr. Bullbrook)

~~You had previously told us that you made a judgement with respect to the~~
letter of July in that you threw it away as being insignificant.

Mr. Cronyn: Well, I am not sure -- it was insignificant to me. I threw it away at the time I ~~was~~ received it.

Mr. Bullbrook: Right, and then you didn't subsequently bring it to ~~us~~ our attention or at least the fact that there was a communication?

Mr. Cronyn: As I said, it simply didn't occur to me when I was giving evidence.

Mr. Bullbrook: Well, was not your evidence that you didn't think it was significant as far as this committee is concerned?

Mr. Cronyn: But that wasn't the reason that it wasn't brought up in my testimony. I think further in my testimony I may well have said ~~it~~ I don't see the relevance of it or the importance of it.

Mr. Eberle: Mr. Chairman, I think Mr. Cronyn's statement if ~~he~~ Mr. Bullbrook will look at it is -- "at the time of receiving the letter of July 14th, it appeared of no significance to me." I think he was primarily relating it to that and I don't mean to derogate from any other evidence he gave later, but I think that's the way he put ~~it~~ it in his statement.

Mr. Bullbrook: But, aside -- Mr. Chairman, if I may, and I want help from counsel in this respect -- my concern is this, ⁱⁿ As I understand the response of the witness ~~in~~ explanation, it is at least twofold. One is that he didn't receive the letter of April 14th, --

Mr. Shibley: No, no, he didn't recollect receiving it.

Mr. Cronyn: And, in fact, I don't think I received it.

Mr. Bullbrook: Well, maybe you want to pursue this for me because that's a refinement that I didn't understand. I take it from his evidence that he said in substance that he didn't receive it.

Mr. Shibley: No, I took it that he didn't have any recollection of receiving it. How a person with no recollection in that regard can say he did not receive it, I am not sure, but I took his position to be he didn't recollect receiving it and for that reason he considered -- well, you can take it from there. It's far

Sept. 11/73
12.30 to 12.35 pm
DT

(Mr. Shibley)

less of a position to say, "Because I didn't recollect ~~xxxx~~ receiving it, I didn't think I had to produce it."

Mr. Bullbrook: But what's causing me, Mr. Cronyn, and to your counsel also, great concern, is the fact that on the 28th of June, prior to that weekend, the very last charge to you, Mr. Cronyn, from our chairman, was: "I am going to take it that the motion to adjourn has been carried, ~~Mr~~ Mr. Cronyn? You have now notice to bring with you not only documents or any items that have already been produced, but to bring anything else that may be material in the way of documents or evidence."

Now, I need your explanation to me as to why in the context of those specific instructions to you ^{it} must have been in your mind, I would think, notwithstanding the tremendous load you have, that ~~at~~ of all the things in your mind that weekend, your attendances before this committee would be, I would ~~think~~ think, paramount ^{why} when this was produced to you, you didn't feel an obligation to bring it our attention?

Mr. Cronyn: Well, I think I have spoken of that. I said that I felt that this was a document which was Mr. Smith's. He had written it. He had it in his possession. It was one that I had no recollection of, that I felt that I had never received. I, therefore, didn't feel that it was my responsibility to make a decision whether to bring it or not to bring it. Mr. Smith had made up his mind he was not going to put it in and I left it entirely with him. I felt it was his decision and he had made it.

Mr. Chairman: Mr. Glen Hodgson.

Mr. R. G. Hodgson: On that point, you have been here before and testified. You are back ~~at~~ the second time ~~on~~.

Mr. Cronyn: I am still here.

Mr. R. G. Hodgson: On a letter that was not produced. You now find that there's another letter being produced, or available, and you didn't feel that that was of sufficient consequence to mention that here to avoid this ^{particular} ~~particular~~ trip this time. I just can't square that.

Mr. ~~Sh~~ Shibley: Well, it goes beyond that, Mr. Cronyn.

(Mr. Shibley)

I will put another proposition to you.

Mr. Renwick: Mr. Chairman.

Mr. Chairman: Do you want to speak to it now?

I thought you meant later on.

Mr. Renwick: I would like to at this point.

Mr. Chairman: All right.

Mr. Renwick: — Because I have a ~~very~~ very real concern about it and I would ask Mr. Eberle ^{not} to interject until I am finished, if he would be good enough to do so.

Mr. Eberle: I will do my best, Mr. Chairman, but

~~Supposed to be on~~

(H-2308 to follow)

September 11, 1973
12.35 - 12.40 p.m.
M.R.

~~Mr. Cronyn: I am not sure of the date.~~
~~Mr. Cronyn: I am not sure of the date.~~
I suppose it depends on what and how Mr. Renwick asks his questions.

Mr. Renwick: Our problem, Mr. Cronyn, is that there were two letters which have only come to light to the committee through the work of counsel and that would not otherwise have come to our attention. Both of the letters were addressed to you. Both of them were from Mr. Smith. One is a letter on July 14th and one was the letter on April 14th.

Now, I want to read the evidence starting shortly after noon on June 28th at Page 826-2, at the middle of the page. "Now just stopping - this is Mr. Shibley, although it doesn't say so, I think it's Mr. Shibley:

"Mr. Shibley: Now just stopping there, Mr. Cronyn, I want to produce to you what is now Exhibit 175, being a letter dated July 14, 1972, from Ellis-Don Limited, over the signature of D.J. Smith to yourself at the John Labatt Limited address in London." ~~xxxx~~

Mr. Renwick: And I might just point out here that I believe both letters were identically addressed. ~~xxxx~~

"Mr. Shibley: "Do you recognize that letter?

"Mr. Cronyn: Yes, I do sir.

"Mr. Shibley: Do you have the original of that letter?

"Mr. Cronyn: No, I don't sir.

"Mr. Shibley: Did you receive the letter?

"Mr. Cronyn: Yes, I did sir.

"Mr. Shibley: And were you aware of the content of that letter when you made the responses to me to which I have referred you, and read from Hansard?

September 11, 1973
12.35 - 12.40 p.m.
M.R.

"Mr. Cronyn: MIT didn't occur to me to raise the letter. The contents of it were extremely vague in my mind by that time. I had taken no action on the letter.

"Mr. Shibley: You didn't respond to it?

"Mr. Cronyn: No, I did not.

"Mr. Shibley: What I am asking you at the moment, however, is having regard for your answers to me as I have read them to you respecting information provided to you during the summer of 1972, how do you reconcile those answers with the receipt by you of Exhibit 175, the letter dated July 14, 1972?

"Mr. Cronyn: As I said, sir, the letter didn't even occur to me during the questioning. I don't memorize all the letters I get.

"Mr. Shibley: And that's your only explanation?

"Mr. Cronyn: It's my only explanation. It simply did not occur to me. We were talking about discussions and meetings and actually the letter never even came into my mind.

"Mr. Shibley: Mr. Cronyn, I'll remind you that I repeatedly asked you, and again at 678-2:

"Had you informed yourself in any other manner during the interval pending your conversation with Smith in the fall of 1972?"

"Mr. Cronyn: Had I ~~asked~~ what?

"Mr. Shibley: 'Informed yourself as to the circumstances regarding the letting of the contract to Canada Square from any other source.' Answer: 'No, I hadn't.'

"Mr. Cronyn: That is correct. I thought you were referring to Mr. Smith as any other source than Mr. Smith.

"Mr. Eberle: Mr. Shibley, Mr. Chairman, I think Mr. Shibley's very next question makes that very clear.

"Mr. Shibley: Mr. Cronyn, I think the committee wants to understand very clearly why neither yourself, nor

September 11, 1973
12.35 - 12.40 p.m.
M.R.

(Mr. Renwick quoting)

Mr. Smith in the first instance, made reference to the letter of July 14, 1972, which, when brought to Mr. Brownlie's attention, he recognized immediately as being highly cogent to the issues before this hearing.

"Mr. Cronyn: But surely - well, I can only answer for ~~myself~~ myself.

"Mr. Shibley: Yes.

"Mr. Cronyn: And I told you it didn't occur to me.

"Mr. Shibley: That's your simple answer?

Mr. Cronyn: Yes.

"Mr. Shibley: Having now reconsidered the content of that letter, do you appreciate that it does contain information salient to the issues before this hearing?

~~"Mr. Cronyn: I think that would have to be a~~

H-2309 to follow

H - 2309 - 1

(Mr. Renwick)

~~"containing information relevant to the issues before this hearing"~~

"Mr. Cronyn: I think that would have to be a legal opinion, I can't give you an opinion on that.

"Mr. Shibley: I want your opinion. Do you not recognize that the facts as outlined in that letter are material to the deliberations of this committee?

"Mr. Cronyn: Well, I don't see anything really new in here that already hadn't been said.

"Mr. Shibley: That's not the point of my questioning, Mr. Cronyn. The point of my questioning is why -----

"Mr. Cronyn: I am sorry, I have answered that question.

"Mr. Shibley: Yes, you have answered that question and I want the committee to understand what your present view of the content of that letter is as to materiality.

"Mr. Eberle: Surely, Mr. Chairman, materiality is not for this witness to determine.

"Mr. Shibley: It is in the sense that a decision was taken as to whether ~~this~~ it was material to be produced or referred to in earlier testimony and that decision was taken by this witness.

"Mr. Eberle: No, Mr. Chairman, I can't disagree more strongly with that. Mr. Shibley asked the witness certain questions and he answered them, and in my respectful submission no problem arises out of those.

"Mr. Bullbrook: M r. Chairman, ~~there is a question as to the materiality of this document~~

"Mr. Chairman: The materiality of this document is -----

"Mr. Bullbrook: Mr. Chairman, I want to say something to you before you make a ruling on this.

"Mr. Chairman: Yes. I am just commenting that I think that the materiality of the documents was important and Mr. Cronyn, ~~in~~ not bringing this forward or mentioning it earlier,

H - 2309 - 2

(Mr. Renwick)

in his own mind made some ruling on it, unless of course he says it didn't come to mind at all, and I think that's his evidence.

"Mr. Bullbrook: Well yes, well -----

"Mr. Eberle: Mr. Chairman, he said the contents of it were entirely vague in his mind and he didn't have it in his mind when he was being questioned on it this last week. I think he has given the answer.

~~Mr. Bullbrook:~~ Mr. Chairman: Mr. Bullbrook.

"Mr. Bullbrook: I understood our counsel was attempting to elicit ^{as} some support for his state of mind, the content of the letter that we don't make a judgment on, but that we accept evidence upon. Certainly, Mr. Chairman, I would like counsel to pursue, as I am sure he intends to, one of the most salient features of Mr. Cronyn's involvement in this matter and some of his evidence related to the question as to whether a government official or some other person had told Mr. Smith that he might be without government work and, of course, the letter contains in the last paragraph that very thing. I want to say as one member of the committee, I find it very difficult to understand how the significance of that last paragraph in the context of our responsibilities would escape Mr. Cronyn's understanding.

"Mr. Chairman: Did you have any comment to make, Mr. Renwick?

"Mr. Renwick: Well, I wanted to ask Mr. Cronyn a question, because I certainly don't accept the response that the question of materiality is a legal question. I would like to ask Mr. Cronyn if he received a communication from the secretary of this committee about his original appearance here".

And the balance of the proceedings dealt with that question of providing you with ample time right through to the end of the hearing on June 28th, following which there was an

H - 2309 - 3

(Mr. Renwick)

adjournment.

Now I want to draw your attention specifically, having read at some length those excerpts, that I take it that ~~My Eberle's statement is~~ Mr. Eberle's explanation as to the reason why the July 14th letter was not dealt with by Mr. Cronyn in his evidence, and Mr. Eberle's statement was -

"Mr. Chairman, he said the contents of it were entirely vague in his mind and he didn't have it in his mind when he was being questioned on it this last week. I think he has given that answer".

Now if I can go over, if I may, Mr. Chairman, to page 837-2 in Mr. Cronyn's evidence on July 3rd:

"In fact it became a purely peripheral matter. I kept no records of my discussions and filed no copies of any correspondence. ~~I had a search made of my files~~"

Tape H - 2310 follows

(Mr. Renwick)

~~filed no material by any correspondence~~ "I had a search made of my files on Friday last and there is no copy of the 14th July letter, or any other relevant correspondence. It is impossible for me to pinpoint the timing or content of conversations with Mr. Smith because of the frequency of contact with him, both businesswise and socially and the low priority that I placed on the subject." ~~Now~~

Now in the light of those remarks I take, Mr. Eberle, that your position in explanation of Mr. Cronyn's behaviour before this committee is that in the instance of the April 14 letter, that even though he had it in his mind, and even though on his own statement he keeps no record of the correspondence from Mr. Smith to himself about this matter, that even having it fully on his mind, that he was entitled to come before this committee and not divulge the existence of that letter, simply on the basis that because he didn't have a copy of it, or the ~~the~~ original of it, because he doesn't keep correspondence, that he was under no obligation to tell this committee about it. I take that to be, Mr. Eberle, the position which you are taking on behalf of Mr. Cronyn today.

Mr. Chairman: Mr. Eberle.

Mr. Eberle: Yes, Mr. Chairman, I think I have explained my position already as best I can. As the Chairman has read out, the terms of the appointment of the committee calls for the production of documents and for witnesses to attend. In my respectful submission, ~~and~~ and I have difficulty in seeing that Mr. Cronyn has in any way failed to produce any documents which he had, or that he has failed to attend and to answer questions. In my respectful submission, he has fully fulfilled his obligations here.

Mr. Renwick: Mr. Chairman, I want to be perfectly clear and I want the record to be perfectly clear and concise about Mr. Eberle's position on behalf of his ~~the~~ client, Mr. Cronyn. I take it that Mr. Eberle's explanation on behalf of

Sep. 11/73
12.50 to 12.55 pm
fvk

(Mr. Renwick)

fact that Mr. Cronyn himself stated that he kept no copies, or he did not keep the correspondence; yet, the explanation for the failure to comment about the April 14 letter is that he had no obligation to do so.

Mr. Eberle: I'm not sure that I fully apprehend all that you're driving at, Mr. Renwick.

Mr. Renwick: Mr. Chairman, I think you fully apprehend all that I'm driving at, Mr. Eberle.

Mr. Eberle: No, I don't think that I do, Mr. Renwick, but I'll do the best I can. Again, it may be somewhat repetitious, but I can only refer to my understanding, first of all, that Mr. Cronyn's evidence about the July 14 letter which, when it was produced to him, even I think before that, having it brought to his attention that there was such a letter, he remembered having received such a letter, ~~and~~ I think his evidence has been quite clear about that. As to the - unless I've got the dates wrong - the April 14 letter, which is the most recent one that we're dealing with, his evidence is that when it was shown to him by, as I understand his evidence this ~~morning~~ morning, when it was shown to him by Mr. Smith, he glanced ^{at} it, didn't read it fully, but obviously glanced at it well enough ^{to} to conclude that he had never seen it before. I'm only trying to express as accurately ^t as I can what ^{I think} his evidence was this morning, and said ~~so~~ ^{at} at once to Mr. Smith.

Mr. Bullbrook: May I -

Mr. Chairman: Mr. Bullbrook, Mr. Deans, let Mr. Eberle finish.

Mr. Eberle: I think that is the ~~purport~~ purport of his evidence here this morning. I don't think it's quite correct to say that he didn't even look at the letter and so couldn't know whether he'd ever received it or not. I don't think he put it that way, Mr. Renwick.

Mr. Chairman: I'm not sure where we're going in regard

Sep. 11/73
12.50 to 12.55 pm
fvk

(Mr. Chairman)

to this but if it's going to help us any, Mr. Deans and then Mr. Bullbrook.

Mr. Deans: Mr. Cronyn, I want to put something to you from what I've listened to the evidence that has been put in this ~~morning~~ morning. I'm brought to the opinion that ~~the~~
~~.....~~

(Tape H-2312 follows)

September 11, 1973
12.55 - 1.00 p.m.
M.R.

(Mr. Deans)

~~but in this meeting, I'm Eberle to the opinion that~~
the reason you didn't raise the matter of the letter was because you believed Mr. Smith was not going to make it known to the committee and therefore there was no chance of us ever finding out about it.

And I believe that that is the reason why you didn't bring the letter to the attention of this committee.

Mr. Chairman: That statement, Mr. Deans, I don't know whether you want to make a comment on it or not, Mr. Cronyn?

Mr. Eberle: I was going to ask ~~if~~ whether it was a question or a conclusion by Mr. Deans.

Mr. Deans: It's a question. Am I wrong in that belief?

Mr. Cronyn: Yes, I think you are wrong.

Mr. Deans: You think ^I I'm wrong ~~yes~~ or you know I'm ~~was~~ wrong?

Mr. Cronyn: Well, I can't say I know because I don't know what Don Smith was eventually going to do.

Mr. Deans: You know Don Smith informed you that he was not going to make the letter available to the committee?

Mr. Cronyn: He informed me he was not.

Mr. Deans: And you came before the committee the following week knowing he wasn't going to, knowing that he hadn't and therefore you thought that the letter wasn't going to come to the knowledge of the committee and that's why you didn't raise it.

Mr. Cronyn: Well, that is not the case.

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: I wanted to ask along the line of Mr. Renwick's questioning to ~~Mr.~~ Mr. Eberle for the sake of my knowledge and understanding: Mr. Renwick's questions were pointed to the state of the witness's ² mind and you in response in giving your explanation said that ~~and~~ and you used the word "has in

September 11, 1973
12.55 - 1.00 p.m.
M.R.

(Mr. Bullbrook)

his possession". You said that when he came he had an obligation to bring evidence that he "has in his possession" to our attention.

I'm wondering, do I take it from that that you don't feel he has an obligation to bring evidence that he has had in his possession to our attention?

Mr. Eberle: Well, you may be reading refinements into my language that I didn't intend, Mr. Bullbrook, and I'm not sure whether I said "has" or "had" but ...

Mr. Bullbrook: The record will show that you said "has^{5/}".

Mr. Eberle: All right. If that is so, then that's fine. But in answer to your query, if the situation were as -- well, let's say with the July -- it's a situation where *if* Mr. Cronyn had received a letter or a contract or some other document and no longer had it in his possession for whatever reason that might be, because he had handed it on to somebody else or something ~~else~~, I don't see how he can produce that document.

Mr. Bullbrook: I didn't ...

Mr. Chairman: Mr. Eberle, I'm sure you are convincing yourself ...

Mr. Eberle: *If he* ~~he~~ doesn't have it.

Mr. Chairman: ... You suggested ~~that~~ earlier that there was no duty on the witness to volunteer. Now, I ruled that I was not very sympathetic on that. We had made a specific demand for evidence and I think there was a duty to produce. However, I don't think we are going to get very much at this time by pursuing this any further. Mr. Bullbrook, you look as though I have hurt your feelings by cutting you off.

Mr. Bullbrook: No, ~~no~~ ^{no} you haven't hurt my feelings.

Mr. Chairman: All right. Mr. Hodgson *had some question*

Mr. Bullbrook: I do want to ~~to~~ ...

September 11, 1973
12.55 - 1.00 p.m.
M.R.

Mr. Chairman: Well, I think we'll have to come back this afternoon to continue yours.

Mr. R.G. Hodgson: Mine is very short. Mr. Cronyn, on the weekend of June 28th, did you discuss the April 14th letter with Mrs. Shuttleworth?

Mr. Cronyn: No, I did not, sir.

Mr. R.G. Hodgson: Did you discuss it while she was present?

Mr. Cronyn: No, I didn't see Mrs. Shuttleworth on that weekend at all.

Mr. R.G. Hodgson: Thank you.

Mr. Chairman: Now, how much longer will you be? Have you any idea? It's about five to one now.

Mr. Shibley: I'll be a little while yet with this witness.

Mr. Chairman: All right. Then I think we had better adjourn until 2.15 p.m.

The committee adjourned at 1 o'clock, p.m.

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
	G.W. Walker
Clerk of the committee:	Paul Moore
Committee counsel:	R.E. Shibley, QC
Assistant to committee counsel:	J.P. Bell
Ontario Hydro counsel:	Pierre Genest, QC
	James McCallum, QC
Canada Square counsel:	Douglas Laidlaw, QC
	Gregory Rice
	G.D. Finlayson, QC
J.B. Cronyn counsel:	J.B. Eberle, QC
Minister of Energy:	Hon. Darcy McKeough
Senior vice-president, John Labatt Ltd.:	J.B. Cronyn

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Tuesday, September 11, 1973

Afternoon session

2313-2345

H-2313-1

The committee resumed at 2:23 o'clock, p.m., in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order and request Mr. Cronyn to come forward. Mr. Shibley,

Mr. Cronyn: I wonder, Mr. Chairman, if I could say something before we commence?

Mr. Chairman: Yes, Mr. Cronyn.

Mr. Cronyn: On reflection at lunch time there was a question that Mr. Shibley started on about the July 1 weekend where he asked me, had I discussed with anybody else the April 14 letter, and ^{to} which I said no. He ~~then~~ then went on and broadened ^{that} out, ~~had~~ I discussed with anybody anything about the committee's procedures, and so on, and I again said, "Well, ~~in~~ ^I in generalities ~~might~~ have". Then he asked me about government, and I think I said "No, sir". Well, on careful reflection I may well, you know, have talked to Mr. Fleck on that weekend. And the reason I called him was to try and ascertain from him what were the rules of procedures and guidelines which guided such a committee as this, because at this time I ~~had~~ ^{had} still not got the information that I was asking for. In fact, that is why I called Smith in the first place, to see if I could get from him the information that had been sent out to him on the terms of reference, the five or six points you were addressing yourselves to, and any other briefing material ~~any~~ he might have got, and it is why he came over to ~~me~~ ^{me} to say he didn't have that information. But I also called Jim Fleck to see if he could give me any sort of guidance on what are the rules of procedures and guidelines that guide a body such as this.

Mr. R.G. Hodgson: Mr. Chairman, Mr. Fleck didn't mention the Legislative Assembly Act to you at that time?

Mr. Cronyn: No, he didn't. He may have, but does it give much guidance?

Mr. R.G. Hodgson: It's fairly pertinent to your testimony here today, and I think you should be aware of it, Mr. Chairman. Do you have it there, would you..

Mr. Chairman: No, I don't have it with me, but there is ^{the} Legislative Assembly Act which does make reference to the

H-2313-2

(Mr. Chairman)

powers of ~~establishing~~ a select committee.

Mr. R.G. Hodgson: I think it makes reference in particular to any sort of information the committee may inquire ^{about} as to it being withheld.

Mr. Shibley: That was a conversation with Mr. Fleck on what day?

Mr. Cronyn: That would be maybe sometime on the 1st of July weekend. When it was, I don't know which day.

Mr. Shibley: Just to be clear, the subject of the letter of April 14, 1972, was never any part of your conversation with Mr. Fleck on that occasion or any other, was it?

Mr. Cronyn: No sir.

Mr. Shibley: I want to deal with the latter with you, Mr. Cronyn.

The first thing that I note about it is that there is no reference, it doesn't say "re Hydro" or anything like that. It seems like an on-going type letter.

"I have given further information to Mr. Candy".
Now, had you received either orally or in writing information from

H-2314-1 follows

September 11th, 1973

2.25 - 2.30 pm

2314 - 1

AA

(MR. Shibley)

~~in connection with the inquiry into the Hydro project, or communications from Smith~~
~~orally~~
as to what he was doing with respect to the Hydro project?

MR. Cronyn: Well, I think that, orally, he had informed me he was making a presentation, and I believe I referred to that in my evidence, at the beginning of that year.

Mr. Shibley: That's right and, in fact, as early as February, I think, you told us Smith had told you that he was concerned that it was a setup that Canada Square had the inside track, had he not?

Mr. Cronyn: I don't think I was ever able to tie it down to February. I just said in the spring.

Mr. Shibley: In the spring. Yes. So that as at the time this letter was written, on April 14, you ^{were} already fixed with Smith's allegations or knew of Smith's allegations that the relationship or friendship between the ~~PREMIER~~ and Mr. Moog might be affecting the manner in which Hydro was dealing with this contract. Is that correct?

Mr. Cronyn: Well, in the spring. Yes, I said in the spring. But I have no recollection of receiving this letter and I don't think I ever did.

Mr. Shibley: Well, I put my question that as at the date of the letter, you ~~were~~ aware that that was the view of ~~MR.~~ Smith that Canada Square, because of the friendship of Mr. Moog with the Premier ~~was~~.

Mr. Cronyn: I was aware that Don Smith was citing hearsay, ~~was~~.

Mr. Shibley: Yes.

Mr. Cronyn: ~~That~~ That that was the case or conjecture, whichever it is. I got confused between them.

Mr. Shibley: That's right. Now then, when you later called ~~MR.~~ Smith - you say it was in December of 1972 - and you told him that he might expect to be interviewed by the press, and you told him to be factual and not to repeat

September 11th, 1973

2.25 - 2.30 pm

2314 - 2

AA

(Mr. Shibley)

hearsay, ~~That's~~ correct, is it?

Mr. Cronyn: Well, I ~~THINK~~ if you go back to my evidence, it was in response to his question of "what do you think I should do?"

Mr. Shibley: Yes, and what did you tell him?

Mr. Cronyn: Well, can we go back to the evidence that I gave *earlier*.

Mr. Shibley: Is it really necessary? I think you simply *said* ~~should~~.

Mr. Cronyn: I ~~THINK~~ it is the way *...*

Mr. Shibley: All right.

Mr. Bullbrook: Do you recall your evidence that he "stay away from conjecture or hearsay?" Does that ~~help~~ help at all?

Mr. Cronyn: Well, it was somewhat along those lines. But it was after he had asked me *...*

Mr. Shibley: All right.

Mr. Cronyn: *...* did I have any advice ~~for~~ what should he do?

Mr. Shibley: Now, when you ~~told~~ told him to stay away from conjecture or hearsay, did you first of all have in mind the conversations you had had with him in the spring of 1972?

Mr. Cronyn: Well, I don't know if I can pinpoint it to that discussion. Certainly, there were parts of it ~~that~~ were in that discussion, yes.

Mr. Shibley: And in particular the relationship of Mr. Moog and the ~~the~~ Premier.

Mr. Cronyn: But not in particular any more than some of the other *...*

Mr. Shibley: Well, was that part of it?

Mr. Cronyn: That's part of it.

Mr. Shibley: Did you have in mind *...*

September 11th, 1973

2.25 - 2.30 pm

AA

2314 - 3

(Mr. Cronyn)

Mr. Cronyn: I didn't spell this out to him though.

Mr. Shibley: Did you have in mind at the time you spoke to Smith and told him to avoid conjecture and to be factual, did you have in mind the fact that you had received a letter from him on July 14, 1972?

Mr. Cronyn: No, I don't think that came to mind at all.

Mr. Shibley: Was it in your mind that he had written a letter of April 14, 1972 to you?

Mr. Cronyn: Not in my mind at all. How would I [?] As I said, I don't have any recollection of this letter.

Mr. Shibley: Well, you didn't have any recollection you said, until July 14, I wondered whether you might have had some recollection of it and then forgot it again. Did you have any recollection of it

Mr. Cronyn: No recollection at all.

Mr. Shibley: when you placed that call to Smith?

Mr. Cronyn: No recollection at all.

Mr. Shibley: I see. Now, you realized, of course, that in this - I am sorry - when you look at this letter, if you will look at it with me, it says, "I would appreciate it if you could put in a good word with Darcy for me."

Now, did you read that on July 1?

Mr. Cronyn: I can't even be sure that I ~~did~~. I glanced at it, read it very quickly and whether that came through to me or not, you know, I really can't say.

Mr. Shibley: Would you agree with me, Mr. Cronyn, that that amounts to a request for you to intercede on his behalf

Mr. Cronyn: No.

Mr. Shibley: ~~with~~ with Darcy MKeough?

Mr. Cronyn: I wouldn't.

~~Mr. Shibley: What interrelates~~

2315 - 1 follows

Sept. 11/73

2:30-2:35 pm

C.B.

(Mr. Shibley)

~~Mr. Cronyn: I intercede on his behalf with Darcy Katsenblatt.~~

~~Mr. Cronyn: No, I wouldn't.~~

Mr. Shibley: Well, what interpretation do you put on that?

Mr. Cronyn: Well, I suppose it's just the same as somebody saying, "Will you give me a recommendation, I'm applying for a job?" Lots of people give recommendations to people who are applying for jobs or positions in government or in business or in universities.

Mr. Shibley: But you notice this morning when I read you your earlier testimony, you repeatedly made the point that Smith never asked you to do anything, ^t what he accepted, from the first occasion on which you told him in 1971, that by reason of your position you could do nothing for him. In fact, Mr. Cronyn, this letter does not appear to be any kind of an acceptance on Mr. Smith's part, that you could do nothing for him. Do you agree with me as to that?

Mr. Cronyn: Well, I'm just not sure what your question is. As I had no recollection of this letter, I had no recollection of anything.

Mr. Shibley: Aside from your recollection, Mr. Cronyn, I'm talking about the content of the letter. You in your earlier testimony made repeated reference to the fact....

Mr. Cronyn: Yes, that's quite right.

Mr. Shibley:that Mr. Smith had accepted your position, your statement to him that because of your position you could do nothing for him. You couldn't intervene or intercede on his behalf. You remember the evidence?

Mr. Cronyn: Yes, that's right.

Mr. Shibley: And you said Mr. Smith accepted that position, and yet we have Mr. Smith writing you as late as April 14, saying, "Could you put in a good word with Darcy for me?"

Sept. 11/73
2:30-2:35 pm

C.B.

Mr. Cronyn: Well, if I had received that letter, I can't say that that would have really disturbed me in any great way.

Mr. Shibley: Mr. Cronyn, that's not my point. My point is that the letter appears to indicate that Mr. Smith did not accept that you could not do anything for him by reason of your position with the government.

Mr. Cronyn: Well, I guess it's the interpretation you put on "putting in a good word", Mr. Shibley. I guess that's what it boils down to.

Mr. Shibley: Well, in the context of a postscript wherein he not only asks that of you, but he says, "He has talked to Colin Brown who was talking to George Gathersole who is going to talk to Darcy McKeough," — ~~in~~ ⁱⁿ terms of reading that request of you ~~and~~ ⁱⁿ the context of the overall postscript, do you still say that he was not asking for you to intercede with Darcy McKeough on his behalf?

Mr. Cronyn: Well, I don't like the "intercede." I'll say he certainly was asking me to put in a good word.

Mr. Shibley: Yes, and that's —

Mr. Cronyn: He was asking me to do something, all right.

Mr. Shibley: And that would be inconsistent with Mr. Smith having accepted the fact that, by reason of your position with the government, you could have nothing to do with the Hydro contract and his efforts to obtain it. Isn't that so?

Mr. Cronyn: That's perhaps so.

Mr. Shibley: ~~And~~ And of the course, the production of this letter is wholly inconsistent. I'm sorry, the content of this letter is wholly inconsistent with the basic position that you repeatedly took throughout your evidence, that you had never been asked to intercede, and is wholly inconsistent with the basic position you took that you could have no communication with anyone pending the publication of the letting of the contract.

Mr. Eberle: Excuse me, Mr. Chairman, I really think that's quite an unfair question.

Mr. Chairman: Well, he was asking if the letter was.....

Mr. Eberle: He's ^{was} wrapping about three or four things together into one question, and I think that he's suggesting things to Mr Cronyn as being evidence which are not.

Mr. Shibley: Mr. Cronyn...

Mr. Chairman: You might take them separately, Mr. Shibley.

Mr. Shibley: All right, Mr. Cronyn, the content of this letter, I might say, Mr. Chairman ^{this} is all directed to motivation, if you like, for the non-production of the letter. The content of this letter is inconsistent with your position that Mr. Smith never asked you to intercede and accepted your position that you could not intercede for him.

Mr. Eberle: Again, Mr. Chairman, I don't like to.....

Mr. Shibley: Do you agree with that?

Mr. Eberle:keep interrupting but I objected to Mr. Shibley's use of the word "position" this ~~am~~ morning in some context or another and I object to it again. Mr. Cronyn's evidence so far is on the record.

Mr. Chairman: Well, ^{of this letter} he's asking the content, whether it's consistent or not. I think that's a fair question. The letter is now in evidence and Mr. Cronyn can put his own interpretation on that, and I think ^{that's} the question ^{that} has been asked him.

Mr. Shibley: Mr. Cronyn, do you agree with me that the content of this letter is inconsistent with your evidence that Mr. Smith accepted that you could not intercede on his behalf?

Mr. Cronyn: Well, as I said before, as I ~~have~~ contest whether I ever received the letter and don't remember it, I ~~am~~

(Mr. Cronyn)

~~Well, as I said before, as I said in the other I~~
~~can't remember it~~ can't
answer that question.

Mr. Shibley: I realize that. I am not talking about
the receipt of the letter any longer. I am saying its content
is inconsistent. Do you agree with that?

Mr. Cronyn: I am not really sure I do, no.

Mr. Shibley: I see.

Mr. Cronyn: I guess it is all how much you put on
your "good word."

Mr. Shibley: All right. And is it not a fact that the
~~defendant~~ writing of two letters to you of April 14 and July 14,
is similarly inconsistent with the ~~position~~ position or the
evidence you gave that you could have no communication referable
to the Hydro building by reason of your position with government?

Mr. Cronyn: I don't follow that question.

Mr. Shibley: You remember your evidence that,...

Mr. Cronyn: Oh, I remember my evidence.

Mr. Shibley: Yes. The question I am putting to you is
that these letters are a form of communication to you referable to
the head office building, is that correct?

Mr. Cronyn: That is correct.

Mr. Shibley: And the fact of that type of communication
is inconsistent with the evidence you gave and the position as
outlined by your evidence that by reason of your position in
government you could have no communication referable to the Hydro
building.

Mr. Cronyn: With anybody in government or Hydro.

Mr. Shibley: With anybody.

Mr. Cronyn: Not with anybody.

Mr. Shibley: I see.

Mr. Chairman: It may not be inconsistent with Mr. Cronyn's
position but it is inconsistent to the point that Mr. Smith didn't
accept that position.

Mr. Bullbrook: Mr. Shibley, just for a moment. I know

[illegible]

He hadn't. Could you ask the witness this? I agree with the Chairman, frankly, that it is Mr. Smith's position here.

Mr. Bullbrook: Go ahead. Obviously, I am interrupting at
the time, so go ahead.

Mr. Eberle: Excuse me, Mr. Chairman, I really think
ng that question to the witness, Mr. Shibley, is ~~very~~

Mr. Eberle: Before it gets any further then, let me...

Mr. Eberle: Well, if Mr. Shibley would stick to the
would eliminate some objections, Mr. Chairman.

Mr. Eberle: Well, if I can just make my point.

Mr. Chairman: Mr. Eberle, in fairness, I have tried to be patient with you this morning and I noticed, this morning, that most of the evidence was given by you rather than Mr. Cronyn. You were asked ~~for~~ many questions, I realize that, and I asked you one or two myself, and Mr. Renwick engaged in quite a long discussion with you, but this is one of the reasons that the

Sept. 11/73
2.35-2.40p.m.
B.A.

(Mr. Chairman)

committee is taking so long, ~~and~~ I think much of the evidence that we are objecting to produce, or that is being objected to from time to time, is really of little importance, apart from the objections to it. ~~It is not the evidence that is the problem but the time that~~

~~when it was admitted~~

(Tape H-2317 follows)

Sep 11/73
2.40-2.45 pm
V.H.

(Mr. Chairman)

We have ~~been~~ ^{had} much evidence put in from time to time that ~~when it was finally~~ ^{had} an objection to it being put in, and ~~it was~~ ^{when} finally put in, it was relative; there was no ^{where} question it was relative. But ~~standing~~ the embarrassment came was the fact that it was objected to, and I think we are almost in that position now and we can tie this up and this is not, Mr. Eberle, a court of law. That is one of the things that may be quite obvious to you, but things that a court may not accept, we have every right here to accept, ~~then~~ and it's up to the members of this committee to put the kind of interpretation they want, ~~and~~ ^{and} I think many of the objections that members and counsel put occasionally are based on the rules of law and rules of evidence as far as a court is concerned. Ours are not quite that narrow, so that's one of the problems we face.

Mr. Shibley: I will read the evidence, Mr. Chairman. At 2238-~~dash~~ 2 of yesterday morning's testimony, about two-thirds of the way down the page:

"Mr. Shibley: Well, when he agreed with you^{??} "The "he" is yourself, Mr. Cronyn.

"Well, when he agreed with you on July 1 that the letter should not be produced, was his position at all the subject of comment between you?

"Mr. Smith: No. No, it was my credibility I was concerned about. I was upset and I said, "I don't gain anything by it. I could have given him that darn thing^{??} " "

He put's that in quotes.

"Mr. Shibley: Mr. Smith, that is the point.

"Mr. Smith: There is no advantage for me to hold that thing and that is what you ...

"Mr. Shibley: Exactly.

"Mr. Smith: You are attacking my credibility on it.

"Mr. Shibley: No, I am ...

"Mr. Smith: You are darn right you ^{are}.

Sep 11/73
2.40-2.45 pm
V.H.

(Mr. Shibley)

"Mr. Shibley: Well, Mr. Smith ...

"Mr. Smith: If I had something to gain, if it was a thing that was damaging, fine.

"Mr. Shibley: Mr. Smith, that is the whole point. There was no reason for you to withhold these letters except to shelter John Cronyn.

"Mr. Smith: No, not shelter.

"Mr. Shibley: Well, what is your expression?

"Mr. Smith: I didn't think they were ^gthat significant and I didn't want to embarrass John Cronyn or Colin Brown or what have you.

"Mr. Shibley: Yes. The whole purpose of your not making disclosure of these documents at the outset was to prevent embarrassment to John Cronyn, Colin Brown and these other people.

"Mr. Smith: Yes.

"Mr. Shibley: It had nothing to do with protecting your personal position?

"Mr. Smith: No. No. I had nothing to gain.

"Mr. Shibley: And similarly with the answers you gave in connection with not ever asking John Cronyn to intercede ~~with~~ for you, you were trying to protect John Cronyn's reputation, weren't you?

"Mr. Smith: I wouldn't say 'protect his reputation.' I didn't want to embarrass him.

"Mr. Shibley: Doesn't that amount to the same thing?

"Mr. Smith: I am not sure if it does. I would say I didn't want to embarrass him. I don't think it was his reputation that was a ^t fault at all. I didn't want to embarrass him. I mentioned that to you the first time I met you, I think."

Now, having regard to Smith's evidence in that respect, Mr. Cronyn, I put it to you that the whole purpose ~~and~~ I shouldn't say the whole purpose ~~is~~ a purpose of withholding these two letters on the part of Smith was to avoid embarrassment to you.

Mr. Cronyn: These letters don't embarrass me in the least.

Mr. Eberle: Mr. Chairman, *excuse me*,

Mr. Shibley: I see. They don't embarrass you ~~me~~ against the background of your evidence that Smith had never asked you to intercede for him and had accepted your position in that respect?

Mr. Cronyn: Certainly in the case of the April -- at least, the July 14 one, which is the only one I recollect, there was nothing in there ^{that} to me, ~~me~~ embarrassed me.

Mr. Shibley: Now you had a meeting with Mr. Smith referable to the evidence to be given before this committee on June 3? Is that correct?

Mr. Cronyn: Yes sir.

Mr. Shibley: And you had another meeting -- or, at least, you had discussion with him on June 13? Is that correct?

Mr. Cronyn: June 13?

Mr. Shibley: Yes. That was the day of ~~the~~ ^a London Life board meeting.

Mr. Cronyn: I think there was some brief reference to him being called.

Mr. Shibley: Yes. And you had another discussion, and I am not suggesting these were all of them, but you had the discussion of July 1 wherein he showed you the April 14 letter? Is that correct?

Mr. Cronyn: That's correct.

Mr. Shibley: Now, Mr. Cronyn, when you got together with Smith

H-2318 follows

September 11, 1973
2:45 - 2:50 p.m.
B.G.

(Mr. Shibley)

~~...wherein he stated that in April, 1972, he had discussed the article with~~

~~Mr. Cronyn. That's correct.~~

~~Mr. Shibley: Yes, Mr. Cronyn, how you first got together with~~

Smith following the publication of the April 28th article in the Globe & Mail, and you discussed that article with him, did you?

Mr. Cronyn: Yes, that's all in my evidence.

Mr. Shibley: Yes, and the fact that he might have to identify you as the person to whom he was referring, was part of that conversation, wasn't it?

Mr. Cronyn: That's correct.

Mr. Shibley: Yes; did you and Smith come to a conclusion that he should keep quiet about the communications he had had with you during 1972 referable to this project?

Mr. Cronyn: No; we did not sir.

Mr. Shibley: I see.

Mr. Cronyn: ~~Flat~~ Flatly.

Mr. Shibley: ~~I see~~ I see; did you and he discuss the documentary evidence ~~and~~ in the possession of Ellis-Don that should be produced?

Mr. Cronyn: No, we did not sir. There was no discussion about that whatsoever about what was being produced.

Mr. Shibley: I see.

Mr. Cronyn: ~~I see~~ ^{As} I had not been called and he had not been called.

Mr. Shibley: I see. In the context of using your expression "being factual", would you include the production of these two letters and a statement of his communications with you during 1972 as something that was factual and should have been disclosed by Smith?

Mr. Cronyn: Well - do I consider them factual?

Mr. Shibley: Yes; yes.

September 11, 19
2:45 - 2:50 p.m.
B.G.

H-2318-2

Mr. Cronyn: Yes, ~~these~~ they're factual.

Mr. Shibley: Yes; I see.

Mr. Cronyn: And no reason why they shouldn't be disclosed. No embarrassment to me whatsoever.

Mr. Shibley: I see. What I'm trying to get from you, ~~Mr. Cronyn~~ Mr. Cronyn, is what interpretation you put on your own words as employed with Smith to be factual and avoid hearsay, whether it extended to, whether being factual would include the production of these letters by Smith?

Mr. Cronyn: Well, I just ~~some~~ answered that question.

Mr. Shibley: I see; now, Mr. Cronyn, from his answers it would appear that Mr. Smith continued to be motivated in the withholding of these documents from this committee by reason of thinking that it would be embarrassing to you. You noted that from his evidence.

Mr. Cronyn: That was one of the reasons, I believe.

Mr. Eberle: Well, surely Mr. Chairman, ~~surely~~ ~~generally~~ Mr. Shibley isn't asking Mr. Cronyn to get inside Mr. Smith's mind. Mr. Smith has given his evidence.

Mr. Bullbrook: He's not asking that at all. Mr. Eberle is quite right. That wasn't the question that was put to the witness.

Mr. Shibley (W): No.

Mr. Bullbrook: Mr. Eberle, you are quite right.

Mr. Cronyn: No, but that was only one of the reasons he gives. One of the reasons was to protect his own credibility.

Mr. Shibley: I realize that.

Mr. Cronyn: And I thought that was the main one from the way the evidence was given.

Mr. Shibley: I see; ~~I see~~; well, what I'm wondering about Mr. Cronyn is whether you ever had any continuing comments or discussion with Mr. Smith which might have influenced him to perpetuate the non-disclosure of the April 14 document?

Mr. Cronyn: No, sir.

September 11, 1973

2:45 - 2:50 p.m.

B.G.

H-2318-3

I see;

Mr. Shibley: /Or the July 14th document?

Mr. Cronyn: No, sir.

Mr. Shibley: But you were aware that there was, so to speak, a ~~complete~~ conspiracy of silence that was developing insofar as the evidence of Mr. Smith and Mrs. Shuttleworth was concerned, and including your own failure to make disclosure of this document to this committee.

Mr. Eberle: Excuse me; excuse me, Mr. Chairman, he has already said he knows nothing about Mrs. Shuttleworth.

Mr. Shibley: All right; as between yourself and Smith, ^{On} July 1st he told you that he was not going to disclose this document to the committee. Is that right?

Mr. Cronyn: That is right.

Mr. Shibley: And whether by express agreement, by a nod, or a lift of your eyebrow, in any event you acquiesced in that decision. Is that correct?

Mr. Cronyn: I made no comment. I felt, as I said earlier, that it was his decision, that he'd made it and it was his alone to make.

Mr. Bullbrook: Then we can assume, we can assume Mr. Cronyn, from your last response, that from that day until the day that it was disclosed, that Mr. Smith was under the ~~constant~~ constant possibility that you might disclose it.

Mr. Cronyn: I guess he was.

Yes;

Mr. Bullbrook: /Right.

Mr. R.G. Hodgson: Mr. Chairman, may I ask a question?

Mr. Chairman: Glen Hodgson.

Mr. R.G. Hodgson: Well Mr. Cronyn, as the letter was addressed to you, ^{did} ~~did you not feel that you were bound to that letter?~~

~~Mr. Cronyn: Right.~~

~~Mr. R.G. Hodgson: As the letter was addressed to you did~~

(Tape H-2319 follows)

H-2319-1

(Mr. R.G. Hodgson)

~~Did~~ you not feel you were a party to that letter?

Mr. Cronyn: Pardon? Sorry.

Mr. R.G. Hodgson: As the letter was addressed to you, did you not think you were one of the principals involved with that letter?

Mr. Cronyn: This is a letter that I have no recollection of and which I don't think I received. Now what is the purport of

Mr. R.G. Hodgson: Well, Mr. Cronyn, when Mr. Smith showed you this letter how far did you look into it, or how far did you read down?

Mr. Cronyn: Well I am used to reading

Mr. R.G. Hodgson: If you read the first line you would

Mr. Cronyn: I certainly saw it was addressed to me.

Mr. R.G. Hodgson: Yes. And if you read the first line of the letter you would see that it ~~wa~~ mentions Ken Candy, chief architect for the Ontario Hydro-Electric Power Commission. If you read the next sentence you would see that it was regarding a proposal. And wouldn't you think that in view of your experience in being back here the second time that you would think that this letter was relevant and part of the production of papers to this committee that would be needed by either Mr. Smith or yourself to produce?

Mr. Cronyn: I would guess from the way the previous letter was treated by this committee that yes, it would be relevant. I think it is completely unimportant, and I don't think it will help the committee one iota, in the questions they are addressing themselves to.

Mr. R.G. Hodgson: I would think, Mr. Cronyn, it wouldn't help the committee one iota, you are right, but I think in making sure that your evidence was creditable before this committee I would think that you would consider it very relevant to you.

Eberle:

Mr. Cronyn: Well Mr. Chairman, if I can interject...

Mr. Cronyn: No, ~~let him~~ answer that question.

Mr. Eberle: I didn't think it was a question, I'm sorry.

Mr. R.G. Hodgson: Wouldn't you think that Mr. Cronyn?

Mr. Cronyn: Wouldn't I think what?

H-2319-2

~~That it~~

Mr. R.G. Hodgson: ~~That it~~ was very relevant to your credibility of your evidence before this committee to have this produced. Wouldn't you think this document would be very relevant if it came up a third time around, that you had to come back here, like you are today, and that you had already been recalled because of one document that hadn't been introduced? Wouldn't you think it would be very relevant to your evidence here before the committee that it be introduced?

Mr. Cronyn: I guess I didn't think it was very relevant.

Mr. Bullbrook: But that really begs the question. Really the question isn't his judgement in that respect. I mean, the problem is Mr. Hodgson hits the nail on the head here. If I may suggest to you Mr. Chairman, through you at least to our counsel, that, ~~um~~ for example, the line of questioning undertaken by our counsel, the response to it was, "I don't consider the letters embarrassing." ~~But~~ That might well be true that the letters themselves aren't —

Mr. Cronyn: I was asked that question.

Mr. Bullbrook: It might well be true that the letters aren't embarrassing; it is the question of the lack of disclosure of the letters that is embarrassing.

Mr. Eberle: But Mr. Chairman, I think we have to bear in mind, as I have tried to indicate to the committee before, that in advising Mr. Cronyn I have told him that he is obliged to produce documents A and I say that he has done that, but that may be a matter for decision A and that he is obliged to answer questions that are asked of him, and to go no further.

Mr. Bullbrook: Are we having it both ways then? Are we given to understand that counsel is now telling us that the lack of production of this information was from counsel's advice? And on the other hand telling us that we are not privy to the information that counsel gave to us? I can't have it both ways. I am prepared to accept the privilege argument, but if counsel is conveying to me as a member, inferentially or directly, that the lack of disclosure was upon the advice of counsel, then of course that puts Mr. Cronyn in a completely different light.

Mr. Chairman: That's what I gathered the answer was.

H-2319-3

Mr. Eberle: Mr. Chairman, I am simply trying to make clear that, of course, in dealing with this with Mr. Cronyn, as he has indicated he wanted to know what the guidelines were, and what the questions were and so on, and of course, as any lawyer would I ~~advise~~ advised him that he was obliged to answer questions and I told him that he shouldn't go any further, that he should just answer the questions.

Mr. Chairman: Did you advise him that there was no need to produce this letter because we hadn't asked for it particularly [^] that is the April 14 letter?

Mr. Bullbrook: That's very important, now that Mr. Eberle has brought it up.

Mr. Chairman: Did you advise him that ~~was~~ there was no need to produce ~~it~~ this April 14, or make reference to it?

Mr. Eberle: That question did not come up.

Mr. Bullbrook: Well then, Mr. Eberle, please don't divert us by your first interjection.

Mr. Eberle: I'm sorry, I'm not trying to divert you, I'm trying to keep the matter on track.

Mr. Chairman: You are succeeding pretty well, Mr. Eberle.

Mr. Bullbrook: Mr. Eberle, what you are doing in effect is telling us that you, as his counsel, give him proper legal advice, and we of course, understand that ~~however~~

H-2320-1 follows

Sept. 11/73

2:55-3 pm

C.B.

(Mr. Bullbrook)

~~Mr. Eberle that you are doing in effect is telling us that~~
~~you as his counsel give him proper legal advice and we of course~~
~~understand that~~ by your own reputation and talent.

Mr. Eberle: I hope it's proper ^{legal} ~~advice~~ advice, I ~~am~~ have been wrong but...

Mr. Bullbrook: No, but you see when we are talking about the production of this information, sir, it puts Mr. Cronyn in ^a completely different light in my mind. Was he subject to your advice on this specific matter? Then, of course, it certainly makes a completely different circumstance. I hearken back that Mr. Hodgson is right at the fulcrum...

Mr. Shibley: Is the record then clear? I'm concerned now in respect to the matter raised by Mr. Bullbrook on Mr. Eberle's behalf. Is the record clear that you did not act on advice of counsel in failing to refer to the April 14, 1972, letter in the course of your testimony, prior to today?

Mr. Cronyn: No, I did not act on advice of counsel.

Mr. Shibley: And your answer would be the same as for the July 14 letter? You did not act on the advice of counsel respecting the non-production of that letter?

Mr. Cronyn: NO, that never...

Mr. Shibley: Did you take advice ^{respecting} ~~regarding~~ the production of that letter before it was produced?

Mr. Eberle: ~~to~~ That particular letter?

Mr. Shibley: Yes.

Mr. Eberle: As opposed to ^a general advice?

Mr. Shibley: NO, that particular letter.

Mr. Eberle: I think he has answered that.

Mr. Shibley: No he hasn't.

Mr. Eberle: Haven't you?

Mr. Cronyn: No.

Sept. 11/73

2:55 - 3 pm

C.B.

(Mr. Cronyn)

I guess not. The July 14th letter, I'm just trying to remember the production of it.

Mr. Shibley: I'll help you a little bit. That letter was produced following the weekend of June 23^{and} 24.

Mr. Cronyn: That's right. I think as I explained in my evidence, the reason that letter never came up was it just simply didn't occur to me.

Mr. Shibley: I realize that. I just ~~was~~^{want} to be sure that it's non-production in the first instance was not on advice of counsel.

Mr. Cronyn: No.

Mr. Shibley: All right.

Mr. Eberle: I'm sorry, Mr. Chairman, ~~but~~ I must have misunderstood, I thought we were still talking about the April 14th letter, I'm sorry.

Mr. Shibley: NO, there were two letters, and now we have the record clear, ~~that~~^{the} so far as ~~decision~~^{not} to reference these letters in the first instance, that was your own decision, Mr. Cronyn, ~~not~~^{no} a decision taken on advice of counsel.

Mr. Cronyn: That's right.

Mr. Shibley: NOW then getting back to Mr. Hodgson's question, what he's asking you, ~~is, did~~^{is, did} you not consider it material and relevant to your own credibility with this committee in the circumstances⁵ wherein you had already given evidence twice¹; ~~the~~^{the} importance of being complete was driven home at you, I think, with respect to the July 14 letter; ~~the~~^{the} dictum of the chairman at the conclusion of the hearing on that Thursday when we recessed, to be complete when you returned; ~~the~~^{the} questioning that was put to you by me and Mr. Gaunt and others, ~~did~~^{did} you not consider it material to your credibility with this committee to advise the committee that there was a ~~the~~ letter shown to you by Mr. Smith on July 1,

Sept. 11/73
2:55 - 3 pm

C.B.

(Mr. Shibley)

two days earlier?

Mr. Cronyn: No, I did not.~~Mr. Cronyn: I have an idea, Mr. Shibley, that on that~~

Mr. Chairman: I have an idea, Mr. Shibley, that on that point most of the committee have their minds made up.

Mr. Shibley: Yes, I know. I want to go to the matter of the conversations with Smith, ^tthe conversation with Smith in December ^tor November of 1972, ^twhichever

Mr. Renwick: Mr. Chairman, I just have one question or at least one area that I want to ask Mr. Cronyn about. When Mr. Smith came to see you on July 1 and showed you the letter, or his copy of the letter of April 14th, and told you what he proposed ~~to~~ to do about it, namely not to disclose it, and you looked at the letter and then made no reply to Mr. Smith ⁱⁿ ~~at~~ that form of communication where Mr. Smith made the effort to come, show you the letter, tell you that he was at least embarrassed by it...

Mr. Cronyn: ~~There was no effort to come, show you the letter, tell you that he was at least embarrassed by it...~~

2321 to follow

(MR. Renwick)

~~was at that time contacted by 31~~

Mr. Cronyn: Excuse me. He didn't make the effort to come to show me that letter. He came over to tell me that he wasn't able to produce the documents that I had asked him for.

Mr. Renwick: All right. Let me start over again. At the time when ^{you} met ^{with} ~~Smith~~ Mr. Smith, on July 1st, and he showed you the ~~letter~~, or the copy of the letter, of April 14th, and told you what he planned to do, namely not to produce it to this committee, and you glanced at the letter and then made no comment, in that form of communication between you and Mr. Smith, given the laconic nature of your answers, ~~what~~ did you expect Mr. Smith to assume from that conversation? What communication did you intend to make to Mr. Smith by your silence?

Mr. Cronyn: I didn't intend to make any communication to ~~Mr.~~ Smith by my silence. I wanted to make perfectly sure ~~that~~ that I was taking no part in that decision as to what he did with that information.

Mr. Renwick: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Deans.

Mr. Deans: Well, Mr. Cronyn, I want you to think carefully about the July 1st weekend. Mr. Smith came to see you. I know counsel is going to ask you what the documents were and we will wait for that. But it is pretty obvious - I was going to ask you the same thing. *I think I know it though, but --*

Mr. Cronyn: I'll answer that right now. This is what I referred to earlier. I ^{wanted} ~~wanted~~ to get the terms of reference.

Mr. Deans: Terms of reference. I assumed that's

Mr. Cronyn: etc., etc., which I had not received and which I assume Mr. Smith had.

Mr. Deans: Could you tell me something about your activities on that weekend, following Mr. Smith coming to see you? This is at Grand Bend.

(Mr. Chairman)

Mr. Chairman: I wonder if you could be a little more specific.

Mr. Deans: Yes, OK. I can be specific. You were at Grand Bend on the Sunday - you ^{were} ~~at~~ Grand Bend on the Monday?

Mr. Cronyn: Yes and ^{then} ~~I~~ ^A I came down here on Monday night for the hearing.

Mr. Deans: You came here Monday night for the hearing and you came directly to here ~~from~~ from Grand Bend?

Mr. Cronyn: Yes, ^{and} ~~I~~ ^A met with Mr. Eberle, and —

Mr. Deans: Did you in the interval go to your office in London?

Mr. Cronyn: No, I did not, sir.

Mr. Deans: Did you check personally to see whether or not you had a copy of the letter ~~of~~ of April 14th?

Mr. Cronyn: The April 14th? No, because I don't think I ever received that letter.

Mr. Deans: No, but that is not the point. ~~Did~~ Did you go to your office in London and check?

Mr. Cronyn: No, but I had had a check made of my files at your ~~request~~ request earlier for anything relevant to the Hydro — any letters from Mr. Smith ^{and} and nothing was turned up.

Mr. Bullbrook: Who was going to make the judgement?

Mr. Cronyn: Well, any letters from Mr. Smith dealing with the Hydro building. That doesn't really cover whether it is relevant to this committee or not, but at least, it would produce any letters. ~~any letters~~

Mr. Deans: When did you have that check made?

Mr. Cronyn: I had that made on Friday.

Mr. Deans: On Friday. *And you —*

Mr. Cronyn: That was subsequent to Thursday. As you will remember, you had me here on Thursday.

(Mr. Deans)

Mr. Deans: Have you ever checked the file personally to see whether or not there is a letter dated April 14th?

Mr. Cronyn: No, I have not.

Mr. Deans: Have you discussed it since July 1st with - I assume you had your secretary do that.

Mr. Cronyn: Yes.

Mr. Deans: Have you discussed it with her ~~or him~~ ~~since that time?~~

Mr. Cronyn: No, I have not.

Mr. Deans: Do you know what letters are ~~in~~ in the file?

Mr. Cronyn: No, I do not. Most of them are just simply minutes of the meetings of Ellis-Don.

Mr. Deans: In other words, you are not absolutely sure of your own knowledge, whether or not there is a copy of such a letter in your file?

Mr. Cronyn: No, I am not. I am quite confident that my secretary would have picked it up under the terms that I asked her ~~to search the files.~~

Mr. Deans: But she wasn't asked to search the file after you became aware of the - Mr. Smith having, himself, a copy of a letter supposedly sent to you dated April 14th.

Mr. Cronyn: That's right.

Mr. Deans: And you have never asked anyone in your office, nor have you ever personally checked through your files to determine whether there is such a letter.

Mr. Cronyn: No. I guess I am ~~not~~ ^{that} sure that I never received it.

Mr. Deans: You have been sure on a number of things.

Mr. Chairman: Well, gentlemen, we now have the letter in our possession and - at least a copy of it.

~~Mrs. Shibley: I don't just have a couple of questions remaining for the Chairman, which is when you placed the call to Mr. Smith.~~

H-2322-1

Mr. Shibley: I just have a couple of questions remaining, Mr. Chairman. When you placed the call to Mr. Smith, in the latter part,

Mr. Cronyn: Which call?

Mr. Shibley: The famous phone call, in the latter part of 1972. Did you have in mind the concern you had that you should not be taken to have had any communication which suggested that you were interceding for Smith regarding the Hydro head office building?

Mr. Cronyn: I am afraid I don't get the question.

Mr. Shibley: Were you concerned at that time, or was it in your thinking at all, when you placed your call to Smith, that you should not be taken by any circumstance or any evidence, as having interceded on his behalf respecting this ~~same~~ contract?

Mr. Cronyn: No, that didn't really concern me because I had not ~~not~~ interceded on his behalf at all. Anywhere, anyhow.

Mr. Shibley: I realize that is your evidence, Mr. Cronyn. What I want to ask you is, were you concerned that there might be evidence suggesting that you might have interceded on his part?

Mr. Cronyn: No, I was not, sir.

Mr. Shibley: That wasn't part of your thinking when you placed the call to him?

Mr. Cronyn: It was not, sir. I was simply tipping him off that he might get a call from the press.

Mr. Shibley: You didn't have it in your mind when you placed that call, that you had had conversations ~~was~~ with him, and at least one piece of correspondence, the July 14 letter, from him in the course of the year. You didn't have that in mind when you called.

Mr. Cronyn: I didn't have it in mind, no.

Mr. Shibley: I see.

Mr. Cronyn: Nor was there any concern. I took no action on that letter.

Sept. 11/73
3.05-3.10p.m.
B.A.

Mr. Shibley: You were concerned about your being identified as the person to whom he was referring in the article.

Mr. Cronyn: In the context of the quote.

Mr. Shibley: Yes.

Mr. Cronyn: Which included a threat.

Mr. Shibley: What I am driving at, Mr. Cronyn, is you told us that you just wanted to let him know that he might expect an interview from the press. I ~~was~~ wonder if there was anything farther in your mind in the sense ~~was~~ of, let us say, the communications that he had - let's leave it on the basis that he had attempted with you.

Mr. Cronyn: No, I was not. That never entered my mind at all. It had nothing to do with the call.

Mr. Shibley: I have no further questions, Mr. Chairman.

Mr. R. G. Hodgson: Mr. Chairman, I would like to ask a question.

Mr. Chairman: Mr. Glen ~~H~~ Hodgson.

Mr. R. G. Hodgson: Mr. Cronyn, have you, in the interval since your last appearance here, and I mean early in July, have you tried to reconcile where you heard about the press investigating or where you got that ~~information~~ information?

Mr. Cronyn: No, I think I went through that before, sir. I really have no idea where I picked that up.

~~MR. CRONYN~~

Mr. R. G. Hodgson: The oddity to me, and I can't quite figure this one out, is that Mr. Dow, when he was here, had not contacted anyone around Queen's Park and he hadn't talked to anyone here, and yet, and I gather that in the first week in November there wasn't really any rumour here about the press investigation of the Hydro ~~building~~ building, and it seemed to me that if what we understand is that - and you were uncertain, ~~if~~ I remember as to when you actually made the call to Mr. Smith.

Mr. Cronyn: No, I was quite certain of that, Mr. Hodgson. It was after the questions were tabled in the House.

Sept. 11/73
3.05-3.10p.m.
R.A.

Mr. R. G. Hodgson: Yes. Then, ^{at} ~~the~~ the luncheon meeting with Mr. McKeough, did he mention that he had had a call from the press? Would that be the source of your ~~xx~~ information?

Mr. Cronyn: No, because I am quite sure that I did~~n~~ not discuss this, or Mr. McKeough did not discuss this ~~xxx~~ with me until after my call to Smith.

Mr. R. G. Hodgson : Would you get the information that the press were investigating from Mr. Fleck, because I believe he also had a call from a reporter?

Mr. Cronyn: I was asked that before and I said I didn't think so.

Mr. R. G. Hodgson: Are you around the halls of Queen's Park every day, and are subject to a lot of rumours?

Mr. Cronyn: Well, in those days I was here two or three days a week, sometimes ~~x~~ the whole week.

Mr. R. G. Hodgson: Yes, well ~~xxxxxxx~~ that's what I thought, I thought you were here most of the week.

~~Mr. Bullbrook: I want to know if I would, with your permission, just pursue one thing that sticks in my mind as a difficulty~~

(Tape H-2323 follows)

H-2328-1

Mr. Bullbrook: I want to, if I could, sir, with your permission, just pursue one thing that sticks in my mind as a difficulty.

When you gave your evidence previously, and although your evidence isn't replete with it I think it ~~was~~ could be characterized, and Mr. Eberle might agree as a position, Mr. Cronyn, that at least during your first conversation with Mr. Smith, you conveyed to him in view of your position with government that you couldn't be of any help to him, and that he accepted it. Your evidence, I take it to be, Mr. Eberle, a position really, certainly it is a position that the witness took based on his evidence, that Mr. Smith accepted your posture. I wonder if you can help me? Did he tell you that he had accepted it? ^{Were} ~~Was~~ there conversations with you?

Mr. Cronyn: Well as soon as I told him on the first conversation there was nothing I could do to help him he said, "Oh, I appreciate that. I quite understand that".

Mr. Bullbrook: Then when you were confronted with the letter of April 14, to your surprise, on July 1, did you not take up with him any additional conversation, bringing to his mind or his recollection. Your ~~was~~ most direct...

Mr. Cronyn: At that point in time the least conversation I had with Mr. Smith was the better.

Mr. Bullbrook: Your answer being that you felt that no response was the best response?

Mr. Cronyn: No, I just didn't want to get into any discussion with Mr. Smith about anything, because when one comes back for this committee one gets asked about, "Did you discuss anything with Mr. Smith, or Mr. X. or Mr. Y?" So I just didn't want to have a discussion with Mr. Smith.

Mr. Bullbrook: We were in the unfortunate position, Mr. Cronyn of not having asked the appropriate questions on July 3, isn't that right?

Mr. Cronyn: No, you have lost me. What would be the appropriate questions?

Mr. Bullbrook: If we had asked you directly...

H-2323-2

Mr. Cronyn: Oh you. Excuse me, I thought you meant me asking Mr. Smith the appropriate questions.

Mr. Bullbrook: If we had asked you directly whether there had been another letter, other than the letter of July 14, brought to your attention by Mr. Smith you would have responded "Yes, there had been"?

Mr. Cronyn: Yes.

Mr. Bullbrook: Right. But because of the absence of that request your position is that you had no obligation to bring that to our attention?

Mr. Cronyn: Yes, sir.

Mr. Bullbrook: And your evidence is that that causes you no embarrassment at all because you don't recollect having gotten the letter?

Mr. Cronyn: That is correct.

Mr. Bullbrook: And your evidence continues to be that you at no time were the author of any conversation with the press that would lead to the eventual report in the Globe and Mail, and that you weren't the person at any time who could possibly be construed as a source close to the cabinet and high in the Conservative Party?

Mr. Cronyn: No.

Mr. Bullbrook: That continues to be your evidence?

Mr. Cronyn: No, I don't think that is my evidence.

Mr. Bullbrook: Well, is it your evidence then that there is a possibility that you are the person who could be construed as close to the cabinet, and high in the Conservative Party, who advised Mr. Smith to, in effect, "Be quiet or you wouldn't get any more government work"?

Mr. Chairman: You ~~are~~ are putting quite a bit into that ____

Mr. Bullbrook: I'm putting into it. You see, the question of who that person was still remains outstanding.

Mr. Chairman: We'll have to draw our own conclusion. I don't think we have conclusive evidence, *on it*.

Mr. Bullbrook: Oh no, we certainly don't have conclusive evidence, but I want it pointed out to you, Mr. Chairman, that

H-2323-3

(Mr. Bullbrook)

Mr. McKeough, his evidence this morning is that almost on a weekly basis he meets with Mr. Cronyn. Right?

~~Mr. Cronyn: Right.~~

Mr. Cronyn: Right.

Mr. Bullbrook: And his evidence is also the fact that Mr. Cronyn and he did discuss this matter.

I want to give Mr. Cronyn the opportunity of absolutely denying. We'll make our decision on his credibility.

Mr. Chairman: I wasn't objecting to you.

Mr. Cronyn: Denying what?

Mr. Chairman: To asking a question, but you had put so much into the question as far as carrying on into the threat that I thought you were making it difficult for Mr. Cronyn to answer it. I don't think Mr. Cronyn has denied that he may be the person that gave Mr. Smith the reason for reporting whatever he did to the newspapers.

Mr. Bullbrook: All right, fine. I'll leave it at that then.

Mr. R.G. Hodgson: I think in all fairness Mr. Cronyn ^{is} having said to Mr. Smith when he was told by Mr. Smith that "you are the person," he said, "In no way could I be that person".

~~Mr. Shibley: There are two parts to it.~~

~~Mr. Eberle: I think that is right. I think we are maybe mixing up a little bit too much at once.~~

Mr. Shibley: There are two.

H-2324-1 follows

Sep 11/73
3.15-3.20 pm
V.H.

(Mr. Shibley)

The only remaining question is whether the words attributed ~~the~~ the words that Mr. Smith used when communicating with the press are any part of what conversation you had with him. That's what you do put in issue? Is that correct?

Mr. Cronyn: Yes, that is quite correct, sir.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Mr. Cronyn, I have three diverse areas to speak about. ^{One} ~~What~~ I want to clear up is the question of Mr. Fleck's notation in his diary on November 7, which is a notation having -- Mr. Shibley, what is exactly the quotation in the diary on November 7 of Mr. Fleck's?

Mr. Shibley: I have a photocopy. I want to be precise on it. It reads: "JBC & Hydro -- Ellis-Don" in handwritten form. That's exactly as it is.

Mr. Renwick: Now that's in Mr. Fleck's Day^Ttimer of Tuesday, November 7, 1972.

Mr. Shibley: And to be completely accurate, this is on the right-hand side where it's a record -- a time-record services-performed diary. In other words, this is not the appointment portion of the Day^Ttimer. It's where he makes notes of things he is doing, intends to do, has done, and that sort of thing.

Mr. Renwick: And in Mr Fleck's evidence, he said that he had checked with you but that you were not in Toronto on the seventh and that, therefore, he could not have met with you on November 7 because you had gone to Florida. Can you assist the committee as to the date on which you did meet with Mr. Fleck and what the substance of that discussion was?

Mr. Cronyn: No, I cannot pinpoint the date any better than I pinpointed it before, which I said was in late November or in early December. If Mr Fleck can ~~not~~ pinpoint it more accurately than I can, I said I don't know that I can argue with him about it. As to the content, that's all in my evidence before.

Mr. Renwick: Well, let me go at it another way.

Can you now tell the committee when you went to Florida?

MR. Cronyn: Yes, I went to Florida on ^{the} Friday previous, which was I think the third, but somebody would have to look it up on a ~~calendar~~ ^{to} see.

Mr. Renwick: WELL, let me try. Yes, Friday is the third.

Mr. Cronyn: Friday morning.

Mr. Renwick: Friday morning, the third....

Mr. Cronyn: Yes.

Mr. Renwick: ... of November.

Mr. Cronyn: I returned the following Friday.

H-2325 follows

Sept. 11/73
3:20-3:25 pm
C.B.

(Mr. Renwick)

~~Friday morning the 3rd of November~~

~~Mr. Cronyn: Yes, I returned the following Friday night~~

~~the~~ following Friday night, and the reason I can remember that so well is it happened to be my mother's 75th birthday and we took the whole family down to surprise her, so it sticks in my mind.

Mr. Renwick: So that that reference in Mr. Fleck's diary— Mr. Fleck started his evidence, and certainly the introduction of this was on the assumption that a meeting took place between Mr. Fleck and yourself, that there was a discussion about Ellis-Don and the Hydro building. As we went into it with Mr. Fleck, the question of the date became uncertain. But Mr. Fleck appeared to me to be quite clear that there was a meeting and that it took place if not on November the 7th, then at a date prior to November 7th. The mystery still remains, which can only be solved by your evidence and Mr. Fleck's evidence of when that meeting took place and ~~was~~ what was the substance of the discussion about Ellis-Don. I might help you by saying

Mr. Cronyn: Well, both of us....

Mr. Renwick: ...Mr. Fleck apparently, in Mr. Fleck's mind, as a follow-up to having met with you and having discussed Hydro and Ellis-Don, then made a further reference on November 9th to get a narrative of some form from George Gathercole. Now I can only ask you once more ^{about} ~~it~~ it. So far as you know you did not meet with Mr. Fleck prior to going to Florida. Or did you meet with Mr. Fleck prior to Florida and discuss the Ellis-Don complaints?

Mr. Cronyn: As I said before, I would ~~be~~ have met before and I would have met afterwards and I would have thought it was afterwards, but I can't argue with Mr. Fleck if he has it recorded. Although I might say that Day-Timer is not necessarily as accurate as one might think.

Mr. Renwick: Well, it certainly couldn't be accurate as

Sept. 11/73

3:20-3:25 pm

C.B.

(Mr. Renwick)

to the meeting on the 7th because you weren't...

Mr. Cronyn: I couldn't have been there.

Mr. Renwick: It could not have been accurate to the fact that you met on the 7th, ~~but~~ but I don't think that that necessarily reflects that the meeting did take place on that time.

But the second matter which was in Mr. Fleck's mind at the period of November 7, 1972, was the press problem. The press problem was very ~~was~~ much in his mind, not only from his own evidence but because of the article which had appeared in the Globe and Mail on December 6.

Mr. Cronyn: December 6, what...

Mr. Renwick: I'm sorry, I want to correct that, November 6th, ~~the 6th~~ There was an article in the Globe and Mail on November 6th.

Mr. Cronyn: I'm not aware of that article.

Mr. Renwick: There's a notation on November 7th...

Mr. Cronyn: I guess I wouldn't have seen it.

Mr. Renwick: ...there's a notation in his diary about this meeting or relationship with you in connection with Ellis-Don, and I would like to know whether or not you made more than one telephone call to Mr. Smith in connection with a warning to him about the possible press inquiries to him.

Mr. Cronyn: Yes, I wouldn't call it a warning; I was simply ~~tipping~~ ^{tipping} him ~~off~~ ^{off}.

Mr. Renwick: Well, I'm trying to take a neutral ~~word~~ ^{word}.

Mr. Cronyn: I only made the one call regarding that subject and that was the one in December.

Mr. Renwick: So there is no way that you can help us in determining that meeting or the substance of that meeting with Mr. Fleck as to its time.

Mr. Cronyn: I can't help you with the timing. But we both gave you our versions of the substance and that's in the record.

H 2325-3

Sept. 11/73

3:20-3:25 pm

C.B.

Mr. Renwick: It would appear from the evidence that in Mr. Smith's mind, you, so far as his conversation with Jonathan Manthorpe of the Globe and Mail in November of 1972 was concerned, ~~and as far as his conversation with~~

H 2326 to follow

September 11, 1973
3:25 - 3:30 p.m.
B.G.

(Mr. Renwick)

~~Now~~ and so far as his conversation with Mr. McAuliffe was concerned, mid-April of 1973. Mr. Smith's evidence is that the person he had in mind in both conversations was yourself, and I think —

Mr. Cronyn: Did that come out in the evidence?

Mr. Renwick: ^{I'm} to the extent/- in yesterday's evidence it appeared to me to be quite clear.

Mr. Cronyn: Could I see that please. I didn't see that. ~~(state)~~

Mr. Renwick: ~~the~~ Yesterday's evidence when I was asking Mr. Smith about who ^{is} was who could have been in his ^s mind at the time.

Mr. Bullbrook: Was that in the afternoon?

~~Yes~~ Mr. Renwick: Yes, yes.

Mr. Chairman: We will take a minute and see if we can find it.

Mr. Renwick: While we're just looking up that, let me ask another question. Since we have to be now so accurate with these questions, ^{is} there any other ~~of~~ correspondence or memorandum or notation or document of any kind which you may have destroyed of which you can now recall that would be of assistance to the committee?

Mr. Shibley: Or which he still has.

Mr. Renwick: Or which you still have.

Mr. Cronyn: No, I have nothing sir; to the best of my knowledge.

Mr. Bullbrook: Do you want the pages that you were on yesterday?

Mr. Renwick: Yes, if you wouldn't mind.

Mr. Bullbrook: You start ~~you start~~ on 2248-2, it would appear.

Mr. Shibley: ¹ While we're waiting, ~~this morning~~ Mr. Cronyn, I overlooked asking you whether you know anything of communications with London Life Insurance Company to provide financing for this building?

September 11, 1977
3:25 - 3:30 p.m.
B.G.

Mr. Cronyn: No, I had heard nothing about it until I read it in the transcript last night. It was never discussed at the board level.

Mr. Shibley: Thank you.

Mr. R.G. Hodgson: And you hadn't discussed it with Mr. Millman?

Mr. Cronyn: No, I had not, ~~and~~ Mr. Hodgson.

Mr. Hodgson: Thank you.

Mr. Cronyn: My recollection of the evidence on reading it it was that it was Mr. Barnicke that came into the Manthorpe statement. I didn't - I haven't got it marked.

Mr. Shibley: ~~Well, he~~ While he is talking about that, at 2254-1 I am sorry, Mr. Renwick, I didn't brief yesterday ~~the~~ afternoon evidence.

Mr. Chairman: What were you doing at lunch, Mr. Shibley?

Mr. Shibley: I was getting ready for Mr. Dillon and Mr. Fleck.

Mr. R.G. Hodgson: Mr. Chairman, do you think we should recess now?

Mr. Chairman: Well, I was just hoping ~~there is~~

Mr. Renwick: No, /no need to.

Mr. Chairman: ~~we~~ we could be through with Mr. Cronyn. I wanted to make just some general remarks to Mr. Cronyn.

Mr. Renwick: Mr. Chairman, could I just ~~make~~ make

Mr. Chairman: Yes.

Mr. Renwick: ~~finish~~ finish these couple of questions. Let me.

(Tape H-2327 follows)

September 11th, 1973

3.30 - 3.35 pm

2327 - 1

AA

(Mr. Renwick)

~~Mr. Renwick: Chairman, could I ask...~~

~~Mr. Chairman: Yes~~

~~Mr. Renwick: I wish those couple of questions...~~

me state what I was trying to find out from Mr. Smith and what I believe I found out from him. I wanted to find out whether or not the reported words which were used in the Globe and

Mail on April 30th -- leaving aside the question of whether or not in the context in which they made they imported a threat, but the actual words that were used, that Mr. Smith had no hesitation in that article as indicating the person he was talking about was you, Mr. Cronyn.

Now - and perhaps this^{is} my own conclusion that in his conversation with Mr. Manthorpe, I may, because of the conflict in the evidence, have to draw the conclusion again that it was you to whom he was referring and not Mr. Barnicke, because I think it's clear from what Mr. Smith has said, what Mr. ^{has said,} Barnicke that he just doesn't fit the category.

Now, either Mr. Smith dreamt up the sense of concern he had about the problem in order to get stories written in the Globe and Mail, or he was thinking entirely about you and not about any threat or way in which Mr. Barnicke could have carried out the matter. Now, do you agree that you were the person that Mr. Smith was referring to in the Globe and Mail article of April 30th?

Mr. Cronyn: I think that's a difficult one to answer.

Do I agree ... How do I --

Mr. Renwick: Mr. Smith has said it was you. He has identified you.

Mr. Cronyn: Yes.

Mr. Renwick: In the circumstances of your relationship with Mr. Smith, do you agree that his identification of you is correct?

Mr. Cronyn: Well, I can't in context of what was quoted

September 11th, 1973

3.30 - 3.35 pm

2327 - 2

AA

(MR. Cronyn)

me saying. I mean I never said anything like that. So how can I, you know, agree that I ~~was the~~ ^{was the} person? You can say I ~~fit~~ ^{fit} one aspect of the description, but when you get down to what is quoted that person saying, that certainly wasn't me and that's the important part of the thing.

Mr. Renwick: Could you have, at any time, used stronger language to Mr. Smith than, "Stick to the facts and stay away from conjecture and hearsay"?

Mr. Cronyn: No, I could not have, sir.

Mr. Renwick: Did Mr. Smith ever discuss with you any other person or conversation that he may have had with anyone else, respecting words which he could interpret as being in some sense a warning to him - not a threat, a warning?

Mr. Cronyn: Nothing other than the Barnicke quotation in that July 14th letter, which I think he has mentioned to the ~~committee and~~

2328 - 1 follows

Sep 11/73
3:35-3:40 pm
V.H.

(Mr. Cronyn)

~~July 14 letter which I think he has mentioned in the~~
committee and certainly to Mr. Shibley.

I think your comments on 2256-3 cover the composite figure. The second paragraph.

Mr. Renwick: Yes, I remember that.

Mr. Chairman: Are you through, Mr. Renwick?

Mr. Renwick: Give me a moment, Mr. Chairman.

Mr. Chairman: Mr. Hodgson, ^{has a question.} ~~you are next.~~

Mr. Renwick: You go ahead, Mr. Hodgson.

Mr. R. G. Hodgson: Mr. Cronyn, do you know Mr.

Moog?

Mr. Cronyn: I met him here at one of the hearings.

Mr. R.G. Hodgson: You haven't socialized?

Mr. Cronyn: Not at all. I have only met him ~~once~~ once here. I just simply shook hands with him here when he was sitting in the back of the room.

Mr. R.G. Hodgson: I really didn't know whether you had been asked that question before or not.

Mr. Cronyn: I don't think I have.

Mr. Shibley: No. I didn't think it was relevant?

Mr. W. Newman: Mr. Chairman, while Mr. Renwick is thinking about his question, Mr. Cronyn, you have known Mr. Smith for a long time. We ~~have~~ heard his evidence before, we heard your evidence before, and we heard his evidence yesterday and yours today, and there is some doubt in my mind, and perhaps this is not a fair question but, knowing Mr. Smith as well as you do, do you think he has a pretty vivid imagination?

Mr. Shibley: I don't think it is a proper question, Mr. Chairman.

Mr. Cronyn: He gets pretty excited at times.

Mr. Renwick: Mr. Chairman, if I could ask Mr. Cronyn, when you called Mr. Smith to warn him about -- I am trying to use that in a neutral sense; no sensation of threat in the use of that term, the way I am using it

Sep 11/73
3.35-3.40 pm
V.H.

Mr. Cronyn: ~~Mr. Cronyn:~~ I wish you would use something else.

Mr. Renwick:...To caution him, ~~and you~~ ~~do you~~ from your experience in business and experience with the government, did you at the time you made that call expect that Mr. Smith was going to adversely affect the business of his company if he were to raise this matter?

Mr. Cronyn: No, I did not, sir. I just simply wanted him to be prepared for a phone call from the press on this subject so he could sort out his thinking beforehand.

Mr. Renwick: Well, ~~you~~ Mr. Cronyn, you had been aware over a considerable period of time that the failure to get, in Mr. Smith's judgment, a proper shake out of Hydro on consideration of his proposal was a matter which rankled with him. Is that a fair statement?

MR. Cronyn: Yes, I was aware he was ~~rankled~~, sure.

Mr. Renwick: Over a continuing period of time? And were you in fact saying to him when you called, were you saying to yourself, "I am not going to be able to prevent Smith from doing this but I want to warn him, or to caution him, when he is called ^b Because he is going to be called by the press about it."? Now in that kind of a ~~rankled~~ situation, were you in fact saying, "I would prefer that you not say anything about this because it is going to harm your business, but, knowing you as I do, all I can do is to caution you not to..."?"

Mr. Cronyn: No. But I didn't caution ...

Mr. Renwick: ~~to~~ "to be careful."

Mr. Cronyn: ^{or} No, I didn't caution him not to do anything.

Mr. Renwick: "All I can do is to caution him to be careful,?"

Mr. Cronyn: Well, I was. No, I was literally trying to get himself so that he would be prepared for a call and know what he wanted to say. I did nothing in any way to influence ~~what he said~~ what he said. Whether he discussed it, whether he told ^{then} ~~him~~ about his beefs, ^{or not} I didn't want to in any way influence him. This was entirely up to him to decide how he want
H-2329 follows

H-2329-1

(Mr. Cronyn)

~~an influence on him~~ This was entirely up to him to decide how he wanted to handle it with the press.

Mr. Renwick: I am going to just try ^{once} ~~one~~ more, Mr. Chairman, then I'm going to shut up. This is the problem you see, that you make these statements to a person who can be affected by the statements which are going to be made and you don't intend to do other than have a very limited purpose or no specific purpose about it. It would seem to me that a man in Mr. Smith's position, receiving a telephone call from you with the knowledge and background and experience in business which you have had, with ~~the~~ your relationship with him, with the support you have given him in his business over the years, your relationship with the government, if you took, and knowing as he knew that you were well aware of his continuing concern about the problem, ^{he} ~~he~~ receives a telephone call from you and again in that extremely brief way that you obviously convey information to people you say, stick to the facts, stay away from conjecture and hearsay. In those circumstances, again the question of communication, what did you expect ~~that~~ the effect would be on Mr. Smith of such a call in that situation, given as you say, in response to my friend Mr. Newman, that Mr. Smith, however you describe it, is imaginative or emotional in many of his responses? What impact did you expect it to have on him?

Mr. Cronyn: ^{if} I expected that ~~he~~ was going to say anything to the press that it would be a more coherent statement than if I hadn't phoned him. In other words, he would have had time to think about what he was going to say, if anything.

Mr. Renwick: Could he have drawn the conclusion from it in your mind, given that situation, that relationship, and that kind of very curt or short, I don't mean unfriendly, short communication which took place, is it possible that Mr. Smith could have said, "What John Cronyn is telling me is to keep quiet"?

Mr. Cronyn: I don't think so. I think he knows me too well. I think if I had been calling him on something and wanted him to keep quiet I would have told him to keep quiet.

Mr. Renwick: Thank you, Mr. Chairman.

H-2329-2

Mr. Chairman: Mr. Cronyn, should we be looking for somebody else as a possible source of threat? *I'm serious*
Mr. Bullbrook: Certainly you are serious and properly serious
Mr. Chairman: He is serious. You don't feel that we can conclude your call was the source of the reported threat, no matter whether it was ~~Mr. Cronyn~~ only a threat in Mr. Smith's mind or not? I am not saying you did threaten him, but you don't feel that your ~~own~~ conversation was the source of the newspaper report?

Mr. Cronyn: No, I don't think so, but I'm not sure that there was any source.

Mr. Chairman: Mr. Glen Hodgson.

Mr. R.G. Hodgson: ~~In~~ fact, Mr. Cronyn, Mr. Smith asked you what he should do, and you told him, if I remember your testimony correctly, that he should be cautious and he should not refer to any hearsay?

Mr. Cronyn: That's right. If he felt strongly enough that he wanted to talk to the press..

Mr. R.G. Hodgson: You did not say to him, "Don't talk to the press". Or you did not say to him,

Mr. Cronyn: No, I did not. My call was just to tip him off. Then he asked me, "Well, what do you think I should do?". And it is apparent from the evidence that he had already done something.

Mr. Chairman: Mr. Deans:

Mr. Deans: I asked this before, but I want to be absolutely clear. Mr. Cronyn, have you spoken to anyone else? Do you have any other information, written, oral? Do you have any other evidence that we should know about before you leave the witness box this afternoon? Something that we won't read about next January and wish we had heard about today?

~~Mr. Cronyn: God, I don't know.~~

H-2330-1 follows

Sept. 11/73
3.45-3.50p.m.
BA.

H-2330-1

~~(Mr. Cronyn)~~

~~leave the witness box this afternoon, and something we won't
read about next January and wish we had heard about today?~~

Mr. Cronyn: God, I hope not.

Mr. Chairman: That is not an answer to the question,
as Mr. Shibley is pointing out to me, to say "you hope not".
The question was, is ~~there~~ there?

Mr. Cronyn: There is none that I know of.

Mr. Shibley: Or have any information about?

Mr. Cronyn: Or have any information about.

Mr. Chairman: Mr. Cronyn, I just want to address one
or two remarks to you. It appears to my mind, and ~~may~~ maybe I am
the only one who thinks this way, that you have been a little
scornful of the work of the committee ^{of} or the committee itself.

Mr. Cronyn: That is not correct, sit.

Mr. Chairman: Well, I am glad to hear you say that.
But certainly, when you first came in, and again, today, from
one of your remarks, I gathered that opinion. Now, none of us
on this committee asked for this job. We were appointed by the
Legislature of the province. It hasn't been a happy task, but
we did not feel that we were appointed to gloss over this enquiry,
^{that} but we were appointed to obtain all the relevant information that
was possible to a matter that was obviously of concern to the
Premier of this province. Now, I would remind you that it was
a business associate of yours that made the ~~start~~ ^{well, it} was the original
start of all of this, and that up until what you have just said,
I thought there was some degree of evidence that would appear the
telephone conversation with you may have been the source of the
threat, and I say threat, realizing that nobody has proved any
threat, that it is just a reported threat and it may be all an
imaginative threat, but at least, that appeared to be the wellspring
of this report in the ~~the~~ newspaper.

Now, if it was, I think, disconcerting to all of us that

Sept. 11/73
3.45-3.50p.m.
B.A.

(Mr. Chairman)

~~if~~ you had decided on your own that this letter of the 14th, of which you may or may not have known the full content but which, obviously, referred to a request for a good word from somebody who was senior in the government of the Province of Ontario, should not have come forth when it did, at least should not have come forth when you were here earlier, and you took it upon yourself to say you didn't feel it was relevant, or that you didn't know enough about it, or that it wasn't your duty to bring it forward, ~~and~~ I just feel that the committee was ~~entitled~~ entitled to fuller information from you in view of the things I have said, that this was a business associate of yours, ~~and~~ We are now left in the position of, perhaps, not accomplishing - I am not saying this is our ~~xxx~~ conclusion but if we accepted your evidence on it it would appear that we have not begun to answer the question of who made the threat, or whether a threat was, in fact, made. So that it hasn't been altogether a satisfactory afternoon, or morning, and perhaps, if this letter of April 14 had come forward earlier, some of the problems that are upsetting me today and upset me yesterday, would not be with us.

Now, I think we are through with our questioning, and if nobody else has any comment, then ~~and~~.

Mr. Bullbrook: You spoke for yourself.

Mr. Chairman: I spoke for myself.

Mr. Bullbrook: I want to, I think on ~~my~~ behalf of my colleague in the Liberal Party, associate myself without reservation in connection with your comments.

Mr. Chairman, ^{Thank you, sir.} ~~Thank you, sir.~~ I think that's all, ~~Thank you~~ thank you very much, Mr. Cronyn.

I think we will take a ten minute recess.

The committee recessed briefly at 3.50 o'clock, p.m.

(Tape H-2331 follows)

Sept. 11/73

4:10-4:15 pm

C.B.

The committee resumed at 4:10 o'clock, p.m.

Mr. Chairman: Ladies and Gentlemen I call the meeting back to order.

Mr. Shibley: Mr. Dillon, please.

RICHARD MAURICE DILLON, Sworn.

Mr. Shibley: Mr. Dillon, what position did you hold with government in the years 1971, 1972 and to date?

Mr. Dillon: Beginning in the middle of last year, two years ago rather, I became executive director of Task Force Hydro, and this job I carried on until the middle of this July when I became ~~Deputy~~ Deputy Minister of Energy.

Mr. Shibley: Yes.

Mr. Renwick: Mr. Chairman.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: I had thought Mr. Gathercole at one point, or someone, had indicated that after Task Force Hydro you had a period as a consultant with Hydro.

Mr. Dillon: Yes, that is correct. In actual fact I suppose my appointment as executive director of Task Force Hydro has not yet been fully carried out because we do have one report to complete. But it is true that after the work of Task Force Hydro began to diminish, that I did agree to act as consultant to the commission on the implementation aspects of Task Force Hydro recommendations, and this I had begun to do before I accepted the appointment as deputy minister.

Mr. Shibley: How long have you known Don Smith of Ellis-Don Construction.

Mr. Dillon: I met him first, very soon after the war, when I began to practice engineering in London.

Mr. Shibley: I'm having produced to you a part of what is exhibit 170, which is the Ellis-Don file and in particular, a memorandum to Mr. Bayley from Mr. Smith dated February 17, 1972.

Sept. 11/73
4:10-4:15 pm
C.B.

(Mr. Shibley)

Wherein it starts off, "Dick Dillon will be back on Monday the 21st and I would try to get to see him before you see Doug Gordon. I would think Dick Dillon could probably open a few doors for you." And it goes on to other matters, "D.J. Smith".

Did you have any communication with anyone from Ellis-Don at about that time or thereafter?

Mr. Dillon: I think that I only have a clear ~~recollection~~ ~~of~~ recollection of speaking to Don Smith himself about the whole topic.

Mr. Shibley: And when was that?

Mr. Dillon: I thought that was later than February.

Mr. Shibley: All right, what is your best recollection as to the time? I don't want to throw you off your own timing by reason of the memo. It only brings to light an intent to communicate with you. What is your best recollection of when Smith spoke to you?

Mr. Dillon: I would say sometime in July, this is on the basis of a review that you and I had. We went over the calendar events which you said involved me, and at that time I thought it was about July. I could be mistaken though.

Mr. Shibley: In any event, Mr. Dillon, what was the subject of the discussion between you on that occasion?

Mr. Dillon: Well, that I do recall very clearly in general terms, it was that Don Smith was putting in a proposal for the Hydro building and that he felt that he wasn't receiving a fair hearing. That was the gist of his story to me.

Mr. Shibley: And did you take any action in that respect or afford him any advice?

Mr. Dillon: Yes, after he had been to see me, I would think it would be at least twice, I suggested to him that he might see Roger Seguin who was one of the commissioners that he did not know and who I did know.

Sept. 11/73

4:10-4:15 pm

C.B.

Mr. Shibley: Yes, and having made that suggestion to him, did you speak to Mr Seguin?

Mr. Dillon: I did.

Mr. Shibley: When was that?

Mr. Dillon: I don't know exactly, but I would think it would be sometime in that period around July, ~~and~~ As I recall I'm not sure whether this was over the phone or during the course of a personal meeting, but I gathered that Roger Seguin said he would be willing to listen if the man had a story. I remember quite clearly that he said "tell him to put it in writing." ~~_____~~

H 2332 to follow

September 11, 197
4:15 - 4:20 p.m.
B.G.

H-2332-1

(Mr. Dillon)

~~...to listen if the man had a story. I remember quite clearly that he would tell him to go and put it in writing".~~

Mr. Shibley: Yes.

Mr. Dillon: This I ~~was~~ conveyed to Mr. Smith.

Mr. Shibley: Yes. Now, other than the discussion with him, which in your best recollection, took place in July, and the conveying to him of your discussion with Seguin, did you have any other discussions with Mr. Smith referable to Hydro?

Mr. Dillon: ~~Not~~ Not about any other topic, no. I would say one or two or three meetings or conversations.

Mr. Shibley: Now then, I'm having produced to you what is Exhibit 169, or I think it's in front of you.

Mr. Dillon: Is that in here?

Mr. Shibley: Yes; where is it, on his right? Yes, it's a letter dated August 21, 1972, from Ellis-Don to Mr. Seguin and would appear to be the result of your suggestion to Mr. Smith that he write to Mr. Seguin. Now, does that accord with your thinking as to the time of the discussion with Smith, the time of your communication with Seguin and your advice to Smith to write?

Mr. Dillon: Well, I note the date is August 21st. This is the first time I've seen this letter, incidentally, but ^{think th} I would fit in, yes.

Mr. Shibley: Yes; when you raised this with Mr. Seguin, was that at a meeting between Task Force Hydro and members of the Hydro Commission?

Mr. Dillon: No; no, this was a meeting—I have a recollection that I was in Ottawa and I went to see Mr. Seguin in his office. I don't know whether that was the time that I took this up or not, but it certainly was either that or a telephone ~~conversation~~ conversation which was devoted entirely to this topic.

Mr. Shibley: Right; well then did you subsequently ask Seguin if he had heard from Smith?

September 11, 1973

4:15 - 4:20 p.m.

B.G.

H-2332-2

Mr. Dillon: Yes, on the basis again of our review of the facts, I recall that at a meeting ~~at~~ which Task ~~Force~~ Force Hydro had set up with members of the Commission to discuss Task Force Hydro work, at the luncheon ~~break~~ break I said, "By the way", or ~~words~~ words to the effect, "By the way, did you hear from Don Smith?" The answer was "yes", and that was the size of it.

Mr. Shibley: Yes; now then, what was the next occasion on which you had any communication from anyone referable to what we might call the Ellis-Don complaints?

Mr. Dillon: You mean a ~~written~~ written ~~communication~~ communication?

Mr. Shibley: No, any kind of a communication. When did somebody next speak to you about the fact that Ellis-Don had been complaining? I will help you, Mr. Dillon. I am thinking now of the fact that on September 1, there was a meeting of the Commission and before that meeting there was a sort of pre-meeting meeting of the Commissioners respecting this letter that is before you to Mr. Seguin, ~~The~~ the letter had been received by Seguin and as a topic he had taken it up with the Commission. Did you hear about the ~~fact~~ fact that the Commission had ~~and~~ considered this letter from Smith to Seguin?

Mr. Dillon: Well, I'm not sure that I heard in those specific terms, but I was told during a conversation that I had with Mr. Gathercole that ~~were~~ words to this effect, that "your friend Don Smith has ~~I~~ I have forgotten what it was ~~he~~ he is causing a lot of trouble," or something like that, I have ~~I~~ forgotten; and from this I inferred, at least, that the letter had been discussed.

Mr. Shibley: Yes; and in terms of time, when was that communication made to you by Mr. Gathercole?

Mr. Dillon: I can't be specific about that. It ~~was~~ was certainly before I began to attend Commission meetings regularly.

Mr. Shibley: Yes.

Mr. Dillon: ~~So~~ And I think that was in December.

Mr. Shibley: Was it before the matter became an ~~issue~~ issue in the press?

Mr. Dillon: I would presume not. I would presume, as I ^{remember}

September 11, 1973
4:15 - 4:20 p.m.
B.G.

(Mr. Dillon)

~~To listen if the man had a story. I remember quite clearly that he said "told him to put it in writing".~~

Mr. Shibley: Yes.

Mr. Dillon: This I ~~was~~ conveyed to Mr. Smith.

Mr. Shibley: Yes. Now, other than the discussion with him, which in your best recollection, took place in July, and the conveying to him of your discussion with Seguin, did you have any other discussions with Mr. Smith referable to Hydro?

Mr. Dillon: ~~Not~~ Not about any other topic, no. I would say one or two or three meetings or conversations.

Mr. Shibley: Now then, I'm having produced to you what is Exhibit 169, or I think it's in front of you.

Mr. Dillon: Is that in here?

Mr. Shibley: Yes; where is it, on his right? Yes, it's a letter dated August 21, 1972, from Ellis-Don to Mr. Seguin and would appear to be the result of your suggestion to Mr. Smith that he write to Mr. Seguin. Now, does that accord with your thinking as to the time of the discussion with Smith, the time of your communication with Seguin and your advice to Smith to write?

Mr. Dillon: Well, I note the date is August 21st. This is the first time I've seen this letter, incidentally, but I think I would fit in, yes.

Mr. Shibley: Yes; when you raised this with Mr. Seguin, was that at a meeting between Task Force Hydro and members of the Hydro Commission?

Mr. Dillon: No; no, this was a meeting—I have a recollection that I was in Ottawa and I went to see Mr. Seguin in his office. I don't know whether that was the time that I took this up or not, but it certainly was either that or a telephone conversation which was devoted entirely to this topic.

Mr. Shibley: Right; well then did you subsequently ask Seguin if he had heard from Smith?

September 11, 1973

4:15 - 4:20 p.m.

B.G.

Mr. Dillon: Yes, on the basis again of our review of the facts, I recall that at a meeting which Task Force Hydro had set up with members of the Commission to discuss Task Force Hydro work, at the luncheon break I said, "By the way", or words to the effect, "By the way, did you hear from Don Smith?" The answer was "yes", and that was the size of it.

Mr. Shibley: Yes; now then, what was the next occasion on which you had any communication from anyone referable to what we might call the Ellis-Don complaints?

Mr. Dillon: You mean a ~~written~~ written communication?

Mr. Shibley: No, any kind of a communication. When did somebody next speak to you about the fact that Ellis-Don had been complaining? I will help you, Mr. Dillon. I am thinking now of the fact that on September 1, there was a meeting of the Commission and before that meeting there was a sort of pre-meeting meeting of the Commissioners respecting this letter that is before you to Mr. Seguin, the letter had been received by Seguin and as a topic he had taken it up with the Commission. Did you hear about the fact that the Commission had ~~and~~ considered this letter from Smith to Seguin?

Mr. Dillon: Well, I'm not sure that I heard in those specific terms, but I was told during a conversation that I had with Mr. Gathercole that ~~were~~ words to this effect, that "your friend Don Smith has ²² I have forgotten what it was ⁶⁶ he is causing a lot of trouble," or something like that, I have ~~6~~ forgotten; and from this I inferred, at least, that the letter had been discussed.

Mr. Shibley: Yes; and in terms of time, when was that communication made to you by Mr. Gathercole?

Mr. Dillon: I can't be specific about that. It was certainly before I began to attend Commission meetings regularly.

Mr. Shibley: Yes.

Mr. Dillon: ~~So~~ And I think that was in December.

Mr. Shibley: Was it before the matter became an issue in the press?

Mr. Dillon: I would presume not. I would presume, as ^{remember} 17

Sep 11/73
4.20-4.25 pm
V.H.

(Mr. Dillon)

the context, I think it was by that time a matter of public concern.

Mr. Shibley: I see. You had indicated to me earlier that you thought it was in September that he made that communication to you. Is your recollection now different to that?

Mr. Dillon: No. No.

Mr. Shibley: You think it was September 1972?

Mr. Dillon: Well, that could well be, but under this it just ---

Mr. Shibley: Well, let me put it this way. In relation to the time -- did Mr. Gathercole indicate to you that it had been raised with the Commissioners?

Mr. Dillon: It was a conversation at which I ^{it} just added up that Roger Seguin had mentioned this letter and my name was involved and so on. I then remembered the letter and that was kind of the first time this whole thing came back to me.

Mr. Shibley: And was Mr. Gathercole nettled at you because you had put Smith on to Seguin?

Mr. Dillon: I wouldn't say he was nettled at me. I think that he was concerned about the general situation and he ---

Mr. Shibley: When he said to you, "Your friend Smith" did he indicate to you that not only he but the other Commissioners were somewhat disturbed that you had had Smith write to Seguin?

Mr. Dillon: No. No. It was not -- the discussion was not in that detail.

Mr. Shibley: No, in terms of relating it to the discussions within the commission about the letter to Seguin, was it shortly after Seguin had raised it with the Commissioners that Gathercole spoke to you?

Mr. Dillon: Well, it would be afterwards. How shortly, I just don't know.

Sep 11/73
4.20-4.25 pm
V.H.

Mr. Shibley: Was there any indication from the content of the discussion as to how soon after the Commissioners had discussed this, Gathercole was saying to you, "Your friend Smith"?

Mr. Dillon: No, I don't think so. I would have thought that it was rather a current event, to put it that way.

Mr. Shibley: And "current" in your mind, would that be within a month?

Mr. Dillon: Well, ~~well~~ certainly I would think it would be a shorter period than that. I am just assuming. It was the fact I think that this thing was now out and a matter of public concern and it was all part of the same picture.

Mr. Shibley: Well, when you say ^{"public"} ~~public~~, it was a matter of concern to the Commissioners?

Mr. Dillon: Yes.

Mr. Shibley: It had just been discussed by the Commissioners?

Mr. Dillon: Well, as I say, the detail of this exchange was not such that I could get anything more out of it than the fact that ~~well~~.

Mr. Shibley: I see. Now then, in the period of November 1972, did you have any communication with anyone referable to the Hydro head office building?

Mr. Dillon: Not that I recall, except of course, in just casual conversations with a number of people, you know, about a topic that was current and of interest to us all in general terms.

Mr. Shibley: Well, in particular, did you have conversation with Mr. Gathercole during November of 1972 referable to the head office building?

Mr. Dillon: No, I did not.

Mr. Shibley: Did you have conversation with Mr. Fleck during November 1972 referable to the head office building?

Mr. Dillon: I did not.

Mr. Shibley: And with respect to December 1972, did you have discussion with either of those two gentlemen regarding the head office building?

Mr. Dillon: I did not.

Mr. Shibley: So can I take it that at no time from, let's say, November 1 and following did you have conversation with either Mr. Gathercole or Mr. Fleck respecting the Hydro head office building?

Mr. Dillon: I did not. It is possible that we might have met and made some casual comment, but certainly not in the sense that we were discussing this thing in terms of substance. Certainly not.

Mr. Shibley: Have you ever discussed the ~~notice~~ mode of letting this contract by Hydro to Canada Square with John Cronyn?

Mr. Dillon: No. Except again in a very general terms. I might say ~~this~~. At the time in July and perhaps later, I used to see Mr. Cronyn on a day to day basis because we had adjoining offices, so we could ~~have~~ well have discussed the thing. But, again, it was not in terms of any part ^{or} ~~of~~ role ^{that} I would have to play in the situation.

H-2334 follows

September 11th, 19873

4.25 - 4.30 pm

2334-1

AA

(Mr. ~~Shibley~~)

~~Mr. Shibley: You referenced~~ a luncheon in September with Mr. Gathercole, does that help refresh your memory as to a discussion with him?

Mr. Dillon: I think that's ^{the} a time that we probably -- he discussed this - my friend Smith.

Mr. Shibley: Yes. At a luncheon in September.

Mr. Dillon: Well, I think we were on our way to lunch.

Mr. Shibley: Yes. So that helps pinpoint that comment to you. And did he at any time indicate that the other commissioners knew that it was Smith who was causing problems or complaining?

Mr. Dillon: No.

Mr. Shibley: Pardon?

Mr. Dillon: No. I merely derived from the conversation that my friend, Smith, had written a letter to Mr. Seguin and that this was discussed. That's as much as I got.

Mr. Shibley: So that, as of September, 1972, Mr. Gathercole knew that it was Smith who had written to Seguin.

Mr. Dillon: Well, certainly, that's what he said to me anyway. So I assume yes.

Mr. Shibley: Thank you. Now then, there is an exhibit, exhibit 91, October 2nd, a memorandum of Mr. Gordon to Mr. Gathercole, wherein Gordon says, "Following Roger Seguin's comments" -- I am sorry, will you get that please?

You will notice it says, "I suggested to Sissons that we should prepare a brief, effective statement of the rationale for Ontario Hydro's action with respect to the construction of its new office building."

Do you know anything about the circumstances surrounding the suggestion that a rationale be prepared?

September 11th, 1973

4.25 - 4.30 pm

2334 - 2

AA

(Mr. Dillon:

Mr. Dillon: Absolutely nothing.

Mr. Shibley: And you, ~~you~~ yourself, were never approached to contribute to any such rationale.

Mr. Dillon: Absolutely no.

Mr. Shibley: Other than the communication you had with Smith in the summer of 1972, ~~you~~ you didn't have any subsequent communications with him by phone or in writing.

Mr. Dillon: This is with Smith?

Mr. Shibley: Yes.

Mr. Dillon: After he had written the letter?

Mr. Shibley: Yes.

Mr. Dillon: No.

Mr. Shibley: In particular, you never placed any phone calls to Smith in November or December of 1972?

Mr. Dillon: Absolutely not.

Mr. Shibley: Just to clear up to one point, ~~MR.~~ Dillon, the recommendation in report number one of Task Force Hydro referable to making Hydro a Crown corporation, was ~~not~~ published on November 13th, but the draft of that report was prepared as early as August, 1972. Is that correct?

Mr. Dillon: The presentation to Cabinet was made, I believe, in August and that presentation formed the basis for the final report.

Mr. Shibley: And to the extent that the report recommended that Hydro be made a Crown corporation, that was part of the August draft of the report.

Mr. Dillon: That is correct.

Mr. Shibley: With respect to the date of the publication of the report on November 13, do you have any knowledge or information that any circumstance relative to the financing for the Hydro head office building in any way affected the timing of that publication?

Mr. Dillon: Certainly such a thought ^{never} crossed my mind, no.

September 11th, 1973

4.25 - 4.30 pm
2334 - 3 AA

(Mr. Shibley)

Mr. Shibley: Aside from the thought crossing your mind, did you have any ~~left~~.

Mr. Dillon: I would have no reason to believe this.

Mr. Shibley: Right.

Mr. R. G. Hodgson: There was no pressure put on you to complete the report or have it ready printed ~~in the~~ matter.

Mr. Dillon: No, sir. I would say the pressure was all the other way. We were trying to get the job done.

Mr. Shibley: I think, in fact, the Premier indicated he didn't want it dealt with at that particular sittings of the House and was going to put it over until the following sittings. Do you know that

2335 - 1 follows

Sept. 11/73
4.30-4.35p.m.
B.A.

H-2335-1

(Mr. Shibley)

~~particular sittings of the House and was going to put it over until~~
~~the following sittings. Do you know that~~ yourself? It is maybe
not a question for you, but ~~-----~~

Mr. Dillon: No, I couldn't answer that question.

Mr. Shibley: All right. ~~Was~~ Did you ever receive any
communication referable to the question of the need to obtain
consent of the Attorney General to sue Hydro? ~~Was that ever~~
Was that ever the subject of communication between Hydro and
anyone in Task Force Hydro?

Mr. Dillon: This was a matter which came up (early in the)
research, if you want to call it that, that we did, that a number
of people, and I can't remember who they were, indicated to us that
they felt it was unfair that Hydro could not be ~~sued~~ sued except with
the permission of the Attorney General, and this, of course,
I believe we included in our report number one.

Mr. Shibley: Mr. Genest, perhaps it is timely to clear
up that part. I have asked you twice about checking the minutes.

Mr. Genest: Yes, well, as I said to you over the telephone
Mr. Shibley, your memory of these matters is infallible. I think
I have given you a copy of ^a~~the~~ memorandum to file by Mr. Easson
which we have located. It is sometime in July of 1972 where ~~-----~~
well, I think you have the text of it.

Mr. Shibley: Yes, it is a memorandum dated July 26, 1972,
wherein reference is made to the - I am not going to exhibit this,
but it was as early as July 26, 1972, when Hydro were raising the
matter of whether the elimination of the need to sue should be part
of an amendment of ^{their}~~an~~ existing act or part of the Task Force Hydro
report.

Mr. Genest: Well, they thought that they should do it
rather than have it recommended by Task Force Hydro, because ~~the~~ Hydro
itself felt that it was an anachronism that should be removed
from the Act, But I think in fairness you should point out that it

Sept. 11/73
4.30-4.35p.m.
B.A.

(Mr. Genest)

has nothing to do with any financing or any objections raised by third parties.

Mr. Shibley: Well, I am satisfied, I might tell the committee now, having had the document produced, that what Mr. Genest says is quite correct in that regard, that this concept of eliminating this need of consent to bring action had been the subject of discussion as early as July 26, 1972, which helps ^{quiet} my concern in that regard. In any event, Mr. Dillon, you can tell us also that as of the very first draft of the report that this provision for making it a Crown corporation was part of that draft.

Mr. Dillon: Yes.

Mr. Shibley: Did you ever receive any information to the effect that your work as part of Task Force Hydro was in any way affecting the financing ~~was~~ arrangements being negotiated by Canada Square?

Mr. Dillon: No.

Mr. Shibley: I have no further question.

Mr. Renwick: Mr. Chairman, I have two or three questions.

Mr. Dillon...

Mr. Genest: I have a number of questions, Mr. Renwick. I don't know if it might be better for me to put them now, to request that they be put on my behalf - that is the usual manner.

My first question, the first question that I would ask be put to the witness, is when he discussed this matter with Mr. Shibley, was the evidence of Mr. Gathercole and Mr. Seguin on this subject, pointed out to him or explained to him?

Mr. Chairman: Did you get that question, Mr. Dillon? It makes it a little awkward coming from behind you rather than in front of you, but the procedure is to put the questions through me, so did you understand that question or do you want it repeated?

Mr. Dillon: Could the question, please, be repeated?

Mr. Genest: Was the evidence of Mr. Seguin and Mr. Gathercole on the subject of the Don Smith communications, was

H-2335-3

Sept.11/73
4.30-4.35p.m.
B.A.

(Mr. Genest)

that explained to the witness at the discussion with Mr. Shibley when he was preparing this witness for giving testimony?

~~Mr. Dutton, during the meeting Mr. Shibley reviewed the evidence which~~

(Tape H-2336 follows)

H-2336-1

Mr. Dillon:

During our meeting, Mr. Shibley reviewed the evidence ~~which~~ during those times in which he said my name had been mentioned. I indicated to him that I had not reviewed any of the evidence, I think. And he did this before he asked me the questions.

Mr. Genest: In particular, was the evidence of Mr. Gathercole that he did not know until these hearings had started that the complaining contractor was Smith put to Mr. Dillon?

Mr. Dillon: I don't recall that question, Mr. Chairman.

Mr. Genest: And was the evidence of Mr. Seguin to this effect, that when Mr. Dillon asked him if he would see Don Smith, Mr. Seguin said if Mr. Smith had any complaints they should be addressed to the commission, and that he would not see him? Was that put to Mr. Dillon?

Mr. Dillon: As I recall, that was the evidence that was indicated, and I indicated that my recollection was that Mr. Seguin had said he did not wish to see Mr. Smith without first having a letter. In other words, "if he wants to talk about it tell him to put it in writing."

I got the impression that the letter was to go to Mr. Seguin, not to the commission.

Mr. Genest: Does the witness then disagree with Mr. Seguin's testimony to the effect that Mr. Dillon was told by Mr. Seguin that he would not see him because official commission business should be dealt with through regular channels?

Mr. Dillon: I don't recall Mr. Seguin indicating that to me.

Mr. Chairman: Thank you, Mr. Genest.

Mr. Genest: I have a few more, Mr. Chairman.

Mr. Chairman: All right. These are still coming from me, Mr. Dillon, but I really don't intend to ask you very many more.

Mr. Genest: As to the conversation with Mr. Gathercole when Mr. Gathercole ^{is} ~~was~~ alleged to have told Mr. Dillon that Smith was creating a lot of trouble, I would like the witness asked if it is possible that that conversation could have taken place as late as last May or early June of this year?

P-2336-2

Mr. Dillon: No, I think that would be impossible, ^{Mr. Chairman} because my recollection was that this was something that had gone on at a commission meeting, and I attended all commission meetings from the time that I became an adviser to the commission.

Mr. Genest: When was the first commission meeting that the witness attended?

Mr. Dillon: I can't be precise, but I think it was sometime around the end of the year or early in the first of this year.

Mr. Genest: Was the witness at any commission meeting when the Smith complaints were mentioned?

Mr. Dillon: No.

Mr. Genest: Is the witness aware of the evidence of Mr. Gathercole that the name of Smith was not mentioned at the commission meeting at which the matter was raised by Mr. Seguin in September, 1971?

Mr. Dillon: I haven't read the evidence. I wasn't aware precisely of this, no.

Mr. Chairman: I'm not too sure...

Mr. Dillon: I'm sorry. It's 1972.

Mr. Chairman: I'm not so sure you need to read the evidence. Do you want to repeat that question?

Mr. Genest: I'll put it in simpler terms.

Mr. Chairman: I'm not so sure it was dependent upon reading the evidence, that was all.

Mr. Genest: I just want to put to Mr. Dillon ^{that} I think the evidence of any witness who has been heard so far, including the commissioners who all gave evidence, was that the name of the complaining contractor was not mentioned.

Mr. Shibley: Let's clear it up. Mr. Dillon, you quite voluntarily stated to me that on the way to that luncheon in September, Gathercole had used the phrase, "Your friend ^{Smith} ~~Dillon~~ has been making a lot of trouble". That was very spontaneous on your part. Isn't that so?

Mr. Dillon: That's right. I think that was the gist of the communication I got. Maybe this would clear the thing up, Mr. Chairman—he didn't say that at a commission meeting or anything

Sept. 11/73
4:35 - 4:40 pm
CA

H-2336-3

(Mr. Dillon)

of this kind. It was just that I just recognized or realized then that this letter was the subject of the concern which was being expressed by Mr. Gathercole to me.

Mr. Shibley: And it was of relatively recent vintage, so to speak.

Mr. Dillon: I would say ... As I explained before, I don't know whether it would be one day or one week before, it just happened to be...

Mr. Shibley: Yes.

Mr. Chairman: Anything else, Mr. Genest?

Mr. Genest: No, except that you might ^{expect} ~~anticipate~~ a request from me to recall Mr. ^{Sequin} ~~Chairman~~, Mr. Chairman.

Mr. R.G. Hodgson: Mr. Chairman, could I ask one question?

Mr. Chairman: Mr. Glen Hodgson.

Mr. R.G. Hodgson: Mr. Gathercole was aware that ~~you~~

H-2337-1 follows

Sept. 11/73

4:40 - 4:45 pm

C.B.

~~(Mr. Gattuso)~~~~no one else might expect a request from Mr. Gattuso.~~~~Secretary Mr. Gattuso~~~~Mr. Gattuso said Mr. Chairman would ask one question?~~~~Mr. Chairman Mr. R.G. Hodgson:~~

~~Mr. R.G. Hodgson: Mr. Gattuso~~ ~~was aware that you~~
were friends with Mr. Smith?

Mr. Dillon: Well he started the conversation by indicating
~~higher~~ that he did recognize that, yes.

Mr. R.G. Hodgson: But you hadn't talked to him
about your friend Mr. Smith.

Mr. Dillon: No, I had not.

Mr. R.G. Hodgson: So the fact that he knew that
you were a friend of Mr. Smith must have come from another source
than yourself.

Mr. Dillon: Well, I took it that this letter which ~~Mr. Gattuso~~

Mr. R.G. Hodgson: Yes, but it came from another, other
than yourself as a source.

Mr. Dillon: Oh yes.

Mr. R.G. Hodgson: ~~Mr.~~ Mr. Smith being your friend.

Thank you.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Mr. Dillon, there was a reference, I can't
be more precise than that to something called a secret task
force report. Has there ever been, as executive director of
Task Force Hydro, was there ever any time devoted by the Task Force
or anyone on behalf of the Task Force to the question of the head
office building of Ontario Hydro?

Mr. Dillon: No, there was not.

Mr. Renwick: It didn't come at all within the terms
of reference of Task Force Hydro?

Mr. Dillon: That is correct.

Sept. 11/73
4:40-4:45 pm
C.B

Mr. Renwick: I notice that Mr. Shibley assisted you by a reference to your diary to your luncheon with Mr. Gathercole in September of 1972. Could it have been possible that that discussion or comment or interchange with Mr. Gathercole took place earlier than that time?

Mr. Dillon: That's conceivable.

Mr. Renwick: Perhaps Mr. Shibley could help me. What was the date on which Mr. Smith saw Mr. Gathercole at the request of Mr. Jackson?

Mr. Shibley: It would be July 13, two days before he wrote the letter of July 15th ^{at} least a day before he wrote the letter ^{of} July 14.

Mr. Renwick: Mr. Dillon, the commission had under consideration the final questions related to the approval of the go-ahead on the Hydro building in the period from June ~~the~~ 29th, 1972 to July 19th, 1972. Mr. Smith gave evidence that Mr. Ernest Jackson of London ^{now} of Toronto, but formerly of London arranged for Mr. Smith to see Mr. Gathercole and saw Mr. Gathercole briefly. The letter of April 14th, which has been in evidence today, indicated that ~~Mr.~~ Colin Brown of London had called ~~Mr.~~ Mr. Gathercole and spoken to Mr. Gathercole on Mr. Smith's behalf. Did Mr. Gathercole refer, in his comments to you or in this interchange, of any other contacts which had been made with him about Ellis-Don?

Mr. Dillon: No, he did not sir.

Mr. Renwick: Did you have any reply from Mr. Seguin at any time, about any course of action which took place?

Mr. Dillon: No, as I indicated earlier, after he agreed to receive the letter we spoke briefly on one other occasion and this was simply, I said, "Did you hear from Smith?" and he said, "Yes" and that was it. No communication since.

Sept. 11/73
4:40 - 4:45 pm
C.B.

Mr. Renwick; I have no further questions.

Mr. Chairman: Any other members?

Mr. R.G. Hodgson: Yes, Mr. Dillon, Mr. Gathercole was a part of Task Force Hydro in its early days I believe. Did you start with Task Force Hydro from the first day?

Mr. Dillon: I started with Task Force Hydro, yes, in its early days. When the Task Force was named ~~and~~ Mr. Gathercole was not a member of the Steering Committee. There had, I believe, been some talk that he might become

~~Mr. R.G. Hodgson: Did you ultimately process the~~
~~proposal~~

H 2338 to follow

September 11th, 1973

4.45 - 4.50 pm

2338 - 1

AA

~~(Mr. Dillon)~~

~~Mr. R. G. Hodgson was not a member of the steering committee. There had, I believe, been some talk that he might . . .~~

Mr. R. G. Hodgson: Did you ultimately discuss the proposal method for Hydro as part of the Task Force discussions?

Mr. Dillon: You mean for the head office?

Mr. R. G. Hodgson: ^{Or for} ~~for~~ any proposal method with regard to Hydro, in Task Force Hydro.

Mr. Dillon: Me personally?

Mr. R. G. Hodgson: The Task Force Hydro group.

Mr. Dillon: I could not answer—I couldn't answer that question. All I could say, though, was that the method of calling for tenders on the office building itself certainly was not discussed.

Mr. R. G. Hodgson: But the proposal method generally.

Mr. Dillon: Well, the reason I hesitate to answer that question is that report number five which has not yet been published deals with the question of "Make-or-buy" and the question of ^{how} ~~Hydro~~ goes about ^{ordering} ~~its goods~~ and services is really the main subject. This general topic could well have been discussed and was the subject of ~~the~~ ^a sitting.

Mr. R. G. Hodgson: But do you understand from your investigations with regard to Task Force Hydro that the proposal or "make-or-buy" sort of propositions are fairly general corporate action of Hydro. Would that be fair to say that? They often operate in a proposal method sort of atmosphere, with regard to generators or buildings for generators, and dams and things of this nature.

Mr. Dillon: I am not sure that I understand your question, sir.

Mr. R. G. Hodgson: Wouldn't it be fair to say that Hydro has a fairly general knowledge of the proposal method?

Mr. Dillon: Oh, absolutely. Right.

Mr. Deans: Mr. Chairman.

(Mr. Chairman)

Mr. Chairman: Mr. Deans.

Mr. Deans: Thank you. Mr. Dillon, Mr. McKeough said this morning on page 2294 - 01, that he had met with you and Mr. —how about that?—Mr. Cronyn and Mr. Muncaster, I believe, for dinner one evening, when Mr. Cronyn raised the matter with him of Don Smith's concern about the handling of the Hydro proposals. I asked MR. McKeough this morning whether either you or Mr. Muncaster said—in fact I'll quote—"Did either MR. Muncaster or Mr. Dillon enter into the discussion as to the manner in which the Hydro ~~contact~~ ^{contact} was handled?"

I would like to ask you, Mr. Dillon, whether you can recall that particular dinner to begin with. HE ~~mentioned~~ it was sometime ⁱⁿ—I believe he said—early ~~December~~ December, but I am not absolutely sure.

Mr. Dillon: That would be December of 1972.

Mr. Deans: 1972.

Mr. Dillon: Well, I think the only comment I can make is that we met—the people you mention met with me for dinner on a number of occasions. If that group were together and I was there, I would think that the main reason would be that we were discussing Task Force Hydro's work in relation to the municipal utilities, in which Mr. McKeough had a special interest, and as I mentioned earlier, this Hydro office building could ~~well~~ well have been the subject of a conversation, but if I took part, it was merely as a bystander.

Mr. Deans: Let me just try for a moment to give you an idea of what I got from Mr. McKeough's discussion. ~~72272~~ It would seem that it was sometime after Mr. Nixon raised the matter in the Legislature, and ~~that~~ I got the impression that MR. Cronyn may well have raised the matter with Mr. McKeough as a result of the matter having become ~~of~~ public ~~concern~~ concern, and I am ~~interested~~ interested to know whether you took part in a discussion of any kind related to Mr. Smith's complaints about—well, let me put it to you another way. Knowing that Mr. Smith had

September 11th, 1973

4.45 - 4.50 pm

2338 - 3

AA

(MR. Deans)

contacted you, and recognizing that you had put him on to Mr. Seguin, and knowing that at that time Mr. Smith was upset about what had occurred, and being at a dinner where it was raised with Mr. McKeough by someone other than yourself, Mr. Cronyn, did you then, with all of those things as facts, enter into any part of the discussion regarding Mr. Smith's discontent?

Mr. Dillon: I have no recollection of this. As I say, I could ~~not~~ have taken part in a conversation, but in that context

2339 - 1 follows

September 11, 197
4:50 - 4:55 p.m.
B.G.

H-2339-1

(Mr. Dillon)

~~... I don't remember of this day, I could not recall it~~
~~in the discussion, but in that context~~ I was not ~~As an~~ executive director of Task Force Hydro my interest in that was merely as one who was ~~not~~ reading the papers and understanding, I naturally had an interest in anything that concerned Hydro, but I simply couldn't comment on the discussion in ~~on~~ any terms other than that.

Mr. Deans: And you didn't volunteer the information that Mr. Smith had approached you? To Mr. McKeough?

Mr. Dillon: At that time? I wouldn't think so, no. I wouldn't think so.

Mr. Deans: ~~You~~ had you discussed that with Mr. ~~Dillon~~ Cronyn?

Mr. Dillon: I discussed that with Mr. Cronyn, the fact that Don Smith had approached me. I cannot remember any specific time but I think it ~~was~~ ^{would} be quite natural for me to discuss it with Mr. Cronyn because ~~they~~ ^{we} said we met regularly, having adjoining offices, and so on. So that I would assume that we discussed it, simply because we ~~were~~ ^{are} mutual friends, but ~~I had not known~~ apart from that I couldn't

Mr. Deans: Can you recall whether Mr. Cronyn indicated that he too had been contacted by Mr. Smith?

Mr. Dillon: Not specifically, no.

Mr. Deans: ~~When was ever~~ was the matter of the press investigation ever raised with you or discussed with you or brought to your attention.

Mr. Dillon: No.

Mr. Deans: Prior to the time of the Nixon questions?

Mr. Dillon: No.

Mr. Deans: Did you say you cannot specifically recall the conversation over dinner?

Mr. Dillon: I cannot recall. No, I cannot, sir.

Mr. Deans: You cannot recall.

Mr. Dillon: No.

H-233902

September 11, 1973
4:50 - 4:55 p.m.
B.G.

Mr. Deans: There is no point in asking you what was said then, is there?

Mr. Dillon: No.

Mr. Deans: ~~Oh~~ Okay.

Mr. Bullbrook: I just want to try --

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: ^{clear} to take something up with Mr. Genest if whether he can help me. I don't know if you heard Mr. Genest's remark that you can expect a request to recall Mr. Seguin.

Mr. Chairman: I heard it with ~~Mr. Seguin's resignation~~

Mr. Bullbrook: Well, I just wanted to know so that we might try to avoid that. Mr. Genest, would it be proper for me to ask you? Do you feel it's because of the ~~same~~ conflict that Mr. ~~Dillon~~ Cronyn's --

Mr. Genest: Not Mr. Cronyn. *It has nothing to do with Mr. Cronyn.*

Mr. Bullbrook: ~~Not~~ Mr. Cronyn, I'm sorry, Mr. Dillon, saying that his recollection was that Mr. Seguin advised that Mr. Smith should write him directly?

Mr. Genest: I think it's Mr. Seguin's evidence that the name Smith was never disclosed.

Mr. Shibley: I think that's ~~possible~~ ^{bothering} Mr. Genest.

Mr. Genest: ~~Genest~~ until these hearings started. In fact, ~~I can't give~~ ^{I can't give} evidence myself ~~but I'm not sure~~ ^{but I'm not sure} Mr. McAllum, we were both there, ^{when} That letter was pulled out and it was the first time anybody had seen it.

Mr. Bullbrook: That's just what I wanted clarified.

Mr. Shibley: I think what's bothering Mr. Genest is that Mr. Gathercole is now reported as having said to Mr. Dillon, in September, 1972, "your ~~friend~~ friend Smith is stirring up quite a fuss". And, so that indicates that Gathercole, at least, knew the identity of the person who had written to Seguin. I don't really think it necessarily follows that Seguin disclosed that Smith was the author of the letter to him. Gathercole --

Mr. Genest: That's getting into your theories of plots, Mr. Shibley.

Mr. Shibley: ~~Yes~~; here we go again. No, no, no. I just wanted to put your mind to rest that I'm not raising ~~that~~ that as a question of Mr. Seguin's evidence, but I think it does go to the question of Mr. Gathercole knowing —

Mr. Genest: But where would he find it out except from Mr. Seguin? Mr. Seguin is the only person ~~who~~ ⁽²⁾ —

Mr. Shibley: That's the very point, Mr. Genest. That's the very point.

Mr. Genest: Yes; we have no ~~real~~ evidence, we have speculation on it, but no evidence.

Mr. Shibley: Well, we now have evidence.

Mr. Genest: *Is it* —

Mr. Shibley: This is the evidence, that he knew.

Mr. Deans: Smith visited Gathercole.

Mr. Renwick: In July.

Mr. Genest: Smith's evidence was that he never made a complaint at all.

Mr. Shibley: No, ^{beyond} ~~beyond~~ that. WE know that somehow from some source that Mr. Gathercole knew that M. Smith was causing troubles, ^{As} of September 1972 he knew that. We don't know precisely how he got ~~his~~ that knowledge.

Mr. Genest: Well, you don't know it, with respect Mr. Shibley, you don't know it.

Mr. Shibley: You don't know the facts.

Mr. Genest: You know it, if you ignore Mr. Gathercole's evidence, which is very clear on the point.

^{I think}
Mr. R.(Hodgson): ~~We~~ also know that Mr. Dillon had an answer

Mr. Genest: Oh, excuse me, I just resent this knowing wink and nod that Mr. Shibley makes. Mr. Gathercole is ~~damned and~~ condemned out of hand in advance, and I resent that.

September 11, 1973
4:50 - 4:55 p.m.
B.G.

H-2339-4

Well, not so

Mr. Chairman: I'm sure, Mr. Genet Genet, that anybody's

condemned Mr. Gathercole.

Mr. Shibley: And I didn't wink or nod

Mr. Genet: Well, it sure sounds like it.

Mr. Chairman: WEll, there may be a difference in evidence

here, ~~now that's a question committed to the jury and it will be~~
~~put on any of the evidence. And whether there will be any more~~
~~of the same kind.~~

(Tape H-2340 follows)

H-2340-1

(Mr. Chairman)

Now that is up to the committee to decide what weight we will put on any of the evidence, and whether there be any remarks in our report at all about the matter.

Mr. R.G. Hodgson: I'm sure we will ask Mr. Gathercole when he comes back here shortly.

Mr. Chairman: If Mr. Dillon indicates one thing and Mr. Gathercole indicates something else, then there is reason for trying to get the matter clarified. If you have anything more to ask Mr. Dillon on the matter,

Mr. Genest: No, I've asked you a question, Mr. ^{Chairman}~~Dillon~~.

Mr. Bullbrook: I'm sorry I brought it up.

Mr. Chairman: Thank you very much, Mr. Dillon, for being with us this afternoon.

Mr. Shibley: Mr. Fleck, please.

Mr. Chairman: I'm just wondering, is Mr. Fleck in the room?

Mr. Shibley: Yes, he is.

Mr. Chairman: Hiding behind that post over there, and I don't know who is here and who isn't. Thank you, Mr. Fleck, I couldn't see you ~~Max~~ behind all that recording equipment that we have, but welcome back.

We administered the oath to you before so that is still effective.

Mr. Shibley: Mr. Fleck, I have very few questions of my own to ask of you.

You were asked to check as to the availability of the originals of the July 21 press release and covering letter from Hydro, and also of the November 15 narrative with the covering letter of November 16. Those four documents were documents for which we requested originals. Have you made a search of the files of the Premier's office in that respect?

Mr. Fleck: Yes, I have asked the head of the filing section and also Miss Anderson who is the Premier's private secretary, and they have made a search of the files. There may be four documents in terms of your exhibits. There are two documents in the sense that there are covering letters and the press release in one case and

H-2340-2

(Mr. Fleck)

the narrative report in the other.

Mr. Shibley: Right.

Mr. Fleck: And in the one we have, of course, the original of what was sent to me, but we do not have the original of what was sent to the Premier.

Mr. Shibley: All right.

Mr. Fleck: And in the other case we have the working copy that I worked from, but we do not have the original; that again would be sent to the Premier.

Mr. Shibley: Now is there some explanation why the originals of the material that was sent to the Premier are not available?

Mr. Fleck: I think that in the case of the July one in all likelihood the material went to the Premier, to his cottage, and since he would know I would have a copy he would ~~not~~ not be concerned about necessarily keeping the original in that case. It was of course just a press release.

In the case of the second one I have a little more difficulty in that it is, of course, not a press release, it is a narrative report. I can only surmise that ~~in~~ in this case I have asked him if he has any recollection of where it might be, and he has none, and I can only surmise that ~~again~~ he would be aware at the time I would have a copy because I believe that was indicated; at least it was indicated on the copy I had. So I would presume that. But that is surmise in the sense that that might provide a reason at the time. I of course have no knowledge of what reason there is.

I should add again that with the volume of material that is coming in in certain cases, especially in terms of press releases, I wouldn't be as surprised.

Mr. Shibley: I want to direct your mind, Mr. Fleck, to the entry in your Day-Timer on November 7, 1972, wherein it is noted "JBC & Hydro - Ellis_Don".

I want to be certain that that entry related to the complaint of Ellis-Don and not to some other matter; just to satisfy my own thinking in this respect. You testified earlier that this made you recall that as of that time you combined the information from

Sept. 11/73
4:55 - 5:00 pm
CA

H-2340-3

(Mr. Shibley)

Mr. Cronyn of the Ellis-Don complaint and the knowledge of, or rumour of, a press investigation, and made a note of it. I should tell you that ~~around~~ on November 6 there was a communication with London Life referable to financing for Hydro, and another one on the 13th. ~~I want to know more.~~

H-2341-1 follows

September 11th, 1973

5 - 5.05 pm

AA

2341 - 1

(Mr. Shibley)

~~reference to financing Mr. Cronyn and another one on the 17th.~~
I want to be sure that this reference, related to Ellis-Don complaints, and not to something else having to do with another contractor for the job, or some other arrangement.

Mr. Fleck: Well, I am sure that it had nothing to do with another contractor or —you mention contacts with London Life—I am not aware of any of those things.

MR. Shibley: It's clear in your mind that you made the note as an indication of Ellis-Don complaints.

Mr. Fleck: That's correct. ^{with} my knowledge of Ellis-Don. ~~I mean, through~~ ^{my knowledge of the fact that they were unhappy, yes.}

Mr. Shibley: And that extends to the entry "JBC" that John Cronyn was talking to you not in respect of financing, not in respect of another contractor for the job, but rather that Ellis-Don were complaining re Hydro.

Mr. Fleck: That they were unhappy with the situation and, of course, I did testify to that at great length before.

Mr. Shibley: Yes. Now then, Mr. Cronyn's recollection of the timing of his conversation with you, and I must say he is very ~~is~~ ^{is} persistent in this respect, that his best recollection that it was late November or early December. Now, in addition, I remind ^{you} that he was on holiday on the 7th, as you discovered and he has said, from November 3rd to November 10th, I believe. Do I take it that notwithstanding Mr. Cronyn's evidence, you persist in your own position that he had, on or before November 7th, reported to you respecting the complaints of Ellis-Don? Is that correct?

Mr. Fleck: Yes, that's correct.

Mr. Bullbrook: Mr. Shibley, I am sorry but I didn't understand the evidence of Mr. Cronyn to be that unequivocal. I thought he did temper his evidence by saying that if Mr. Fleck said it was before ^{then} that he was prepared to abscond Mr.

September 11th, 1973

5 - 5.05 pm

2341 - 2

AA

(Mr. Bullbrook)

Fleck's evidence.

Mr. Shibley: You may be right. That helps matters, because in any event, we have a recorded entry ^{here} that helps pinpoint the latest point of time. Now, the only other question I WOULD like to put to you in this connection is, it could have been any time prior to the 7th when Mr. Cronyn communicated that complaint to you, and having regard that this entry obviously ~~was~~ not made contemporaneously with him having given you that information, can you assist the committee as to when, prior to November 7th, he made this information available to you?

Mr. Fleck: I am sorry, that I am unable to do. We did have a discussion about that last time I was here and I think even at that time I had mentioned that MR. Cronyn ~~was~~ ~~thought he had been away at the~~ ^e ~~particular time.~~

Mr. Shibley: I remember.

Mr. Fleck: And I have not been able to because, of course, I don't have sort of recorded appointments with Mr. Cronyn. I don't have notes of any particular meetings. ~~I~~ I can only presume that it is sometime in the not-to-distant period to that particular day.

Mr. ~~Shibley~~ Shibley: That was what I was wondering about. You see . . .

Mr. Fleck: But I don't know.

Mr. Shibley: . . . we now know, and I don't know whether this is subsequent to your previous testimony, we now know, however, that there was a letter written on July 14th . . .

Mr. Fleck: That was prior to my testimony.

Mr. Shibley: Oh, it was.

Mr. Fleck: ^{If you} ~~you~~ remember that was, I think, the last of the previous week.

Mr. Shibley: And I am wondering whether you can ~~can~~ would it be as early as July 14th?

September 11th, 1973

5 -- 5.05 pm

2341 - 3

AA

(Mr. Fleck)

Mr. Fleck: Since I don't know, it is very difficult to say that it wasn't. But I would doubt it very much, because I just can't imagine sort of carrying it around in my head that period of time. In fact, I can definitely -- no, it was not as early as that. *It just doesn't make sense.*

Mr. Shibley: Right, so that we can say that it was sometime prior to November 7th but not as early as July of 1972.

Mr. Fleck: Yes.

Mr. Shibley: And can we telescope ^{it} even further? Could we cancel out August of 1972?

Mr. Fleck: ~~It~~ *It* is impossible to cancel out anything since I don't recollect, but in my own mind, I would cancel out August and I WOULD cancel out September.

Mr. Shibley: Right. So the earliest would be October of 1972.

Mr. Fleck: That would be my guess but it would strictly be a guess.

Mr. Shibley: Now then, I have had ~~put in front of you~~
~~two letters -- Exhibit 175~~

~~Yes / No / Mr. Fleck: I have that.~~

~~Mr. Shibley: And also exhibit~~

2342 - 1 follows

Sep 11, 1973
5.05-5.10 pm
V.H.

(Mr. Shibley)

in front of you two letters, exhibit 175 and also exhibit 211, Mr. Fleck. These are letters dated ~~May 14, 1972~~, July 14, 1972 and April 14, 1972. Have you at any time had any knowledge or information referable to these two documents?

Mr. Fleck: Of course, the July 14 I was aware of the first time around.

Mr. Shibley: Right.

Mr. Fleck: I was not aware of the April 14 letter until, I guess it was Monday of this week, or whenever it was that it came up in testimony this week.

Mr. Shibley: Right. It was never the subject of conversation between yourself and Mr. Cronyn or anyone?

Mr. Fleck: No, it was not.

Mr. Shibley: I have no further questions.

Mr. Chairman: Any members of the committee?

Mr. Glen Hodgson.

Mr. R.G. Hodgson: I would like to ask Mr. Fleck. You referred to earlier that the investigation you thought was with regard to the Star, Have you been able to pinpoint where you obtained that impression?

Mr. Fleck: No, I have not.

Mr. Chairman: Anyone else? Mr. Renwick.

Mr. Renwick: Mr. Fleck, when you made the notation on November 7 in your Daytimer your ~~xxxx~~ evidence, as I recall it indicated that it was a conjunction of two events, ~~the~~ Complaints were relayed to you by Mr. Cronyn about Ellis-Don's concern about the Hydro contract, plus a sensation that there was going to be press ~~xxxx~~ stories or accounts about it. Mr. Cronyn is adamant on this particular part of his evidence, that is, that he did not call Mr. Smith about a possible press inquiry until after Mr. R.F. Nixon tabled his ~~xx~~ questions on December 1. Your evidence, as I understand it, indicates to me that the press questions which alerted you around November 7 were right around that time.

Sep 11, 1973
5:05-5:10 pm
V.H.

Mr. Fleck: Well, ^{that} I am not sure of. But it could be, if I remember correctly, there was talk about some articles appearing around then. I can remember there was something that Mr. Nixon said that related to the location of the building and criticisms of the building. I am sorry, I forget the dates.

XXXXXX

Mr. Renwick: But you were alerted as M at November 7, you were alert to possible press inquiry?

Mr. Fleck: That's my recollection, yes.

Mr. Renwick: Can you recall ~~in~~ the communication between yourself and Mr. Cronyn at that time or prior to that time, because Mr. Cronyn was away, but whenever/that November 7 act took place that you had discussed with Mr. Cronyn or he had discussed with you concern about press stories in connection with the Hydro building as well as the Ellis-Don complaints.

Mr. Fleck: I don't, because if you remember the discussion with Mr. Cronyn, and here I would have to go back over the evidence, but it was in the context of the proposal method versus the tender method and in relation COGP activities, ~~and~~ I think I would remember the nature of the discussion being somewhat heightened if it had an element of press interest as well. My only recollection of that is that is related to this question of proposal versus tender and ~~in~~ the fact that Ellis-Don, a company of which he was a director, had not received and the recollection I have, ^{had} not received sufficient time to do a good job of preparing a proposal. That was the concern at that time. Now ~~I think~~ I would think it would then be, it would most likely make sense to me, that it would be later that I would somehow have the feeling of the press. Now I don't know whether I would have the feeling of press again in relation to that specific event because the press was interested in quite a few areas at that time.

Mr. Renwick: And, Mr. Chairman, one further question. So far as ~~that~~^{2/} notation^{1/} on the original of Mr. Gathercole's letter to the Premier, have you any further information that you can give to the committee?

Mr. Fleck: What is that now?

Mr. Renwick: The letter of May 16 which has the notations on it, have you any further information that you can give to the committee?

Mr. Fleck: No further information to that I have provided before, no.

Mr. Renwick: You have no idea as to the origin of the information or the misinformation that would have led you to make that notation to Mr. Rowan?

Mr. Fleck: Other than I have already. No.

H-2343 follows

H-2343-1

~~What would have led you to have read that notation to Mr. Rowan?~~

~~Mr. Fleck: No.~~ If you will remember it is Mr. Rowan that makes the notation, *based on his interpretation*

Mr. Renwick: But you would have made the comment to Mr. Rowan which would have led Mr. Rowan to make that note.

Mr. Fleck: No.

Mr. Renwick: There is no need for us to call Mr. Rowan. Mr. Rowan's note would be an accurate notation of what you would have said in summary form.

Mr. Fleck: It is an accurate notation of what Mr. Rowan is sure that I ^{ve}said. In my mind it is not an accurate notation because, of course, I don't think I said it. But I am not in any way questioning that Mr. Rowan thought it was said, and ^{that} Mr. Rowan wrote it on there, not at all. I am questioning whether I in fact said it.

Mr. Renwick: The only reason you are questioning whether you said it or not is because it has been denied that it was made, is that correct?

Mr. Fleck: No, two reasons; one, I didn't have an actual recollection of having had the conversation with Mr. Rowan that led to this particular notation, and the other reason was, I think as I ~~have~~ indicated before, it wasn't consistent with my own belief as to what should have been the appropriate action to take, and those were the two reasons.

Mr. Renwick: Well, Mr. McKeough this morning indicated that the letter of May 16 to the Premier accurately reflected the substance of Mr. McKeough's advice or suggestion, or recommendation to Mr. Gathercole.

Mr. Fleck: Of course, I am not aware of what his testimony was this morning. I presume that that would be the case.

Mr. Renwick: Did you participate in any positive decision that the matter was not to be referred to the Ministry of Government Services?

Mr. Fleck: No.

H-2343-2

Mr. Renwick: Did you participate in any decision that the matter was to be left entirely to Hydro?

Mr. Fleck: No.

Mr. Renwick: You say that you were concerned about that notation because it didn't appear to be the appropriate course to take. What in your view do you think would have been the appropriate course to have taken?

Mr. Fleck: The difficulty I would have there is I would be surmising what course of action the Premier might think it appropriate to take. In my view, and as I think I indicated at the time, it would not be necessary for Hydro to be referring the matter to Public Works, and Public Works would not normally have any sort of a line or executive or approval relationship with Hydro in terms of their building; that is a separate agency and an agency that looks after its own contracts.

Mr. Renwick: Let me ask you in the light of perhaps information or evidence that has been given to us subsequent to the time. It appears to come through that in February, when Mr. Gathercole first raised the matter with the Premier, that Mr. Gathercole took it as at least informal approval to proceed with the plans for the head office, that the evidence would appear to be that he was to raise the matter with Mr. McKeough when he was with him, that he did raise it with Mr. McKeough, that Mr. McKeough's best advice to him, as soon as he found out that it did not impinge on the credit of the province through the leaseback arrangement, was that an evaluation should be made of the proposals. And I think that was the substance of Mr. McKeough's evidence this morning, and that Government Services might be the appropriate place to have the evaluation made.

Mr. Fleck: Yes, I'm sorry, I'm not aware of that, and was not aware that that was Mr. McKeough's intention. Of course, I just can't make comment on that. My understanding that the Premier...

Mr. Renwick: As the follow-up this was the origin of Mr. Gathercole's letter stating what Mr. McKeough had said, and then despite what the note says, apparently nothing happened on that

Sept. 11/73
5:10 - 5:15 pm
CA

H-2343-3

(Mr. Renwick)

portion of the letter?

Mr. Fleck: Well, two things. One, ~~the~~ the Premier, it is my understanding, referred Mr. Gathercole to Mr. McKeough on the matter of the financing. I mean that is the substance of his conversation at Pickering, and I think that was the reason for the referral. In terms of the fact that no subsequent action ~~was~~ was taken on the letter, one reason that has been indicated ~~is~~ is that, right or wrong, the notation, a notation was there, and the notation would indicate that the matter had been concluded in some sense, even if inaccurately. And so that no further action would be taken.

Mr. Renwick: You have ~~me~~ me beaten.

Mr. Fleck: I am not trying to beat you.

Mr. Renwick: I have heard everything now that the..

H-2344-1 follows

Sept. 11/73
5.15-5.20p.m.
B.A.

H-2344-1

~~... in some cases, even if immediately and so that no
... would be taken.~~

~~Mr. Renwick: You have no basis. I have heard everything~~
~~... incorrect note on the letter was satisfaction to~~
everyone that the proper action had, in fact, been taken, despite
the fact that the note was wrong.

Mr. Fleck: But there isn't a recognition that the note
is ~~was~~ wrong at that stage.

Mr. Renwick: I understand. I don't think I can proceed
any further. The reason that there was no follow-up on the letter
is because the notation indicated there had been a follow-up when
in fact there hadn't been a follow-up.

Mr. Chairman: That's the way to run a successful
government, Mr. Renwick.

Mr. Renwick: Time will tell, Mr. Chairman.

Mr. Wm. Newman: Mr. Chairman, ^{there's} one question I would like
to ask. This notation, this famous notation of November 7th in
your diary; after hearing all the evidence and the fact that
Mr. Cronyn was in Florida on this date, ~~do~~ do you at any time make
notations in your diary to set up a future meeting, to remind you
to set up a future meeting?

Mr. Fleck: Yes, I do.

Mr. Newman: Could this have happened in this case?

Mr. Fleck: In terms ^{of} that particular reference?

Mr. Newman: Yes.

Mr. Fleck: It is conceivable, but ^{if} the ~~last~~ information
I am going to receive from Mr. Cronyn when I have the meeting is that
Ellis-Don are complaining, it would be difficult to add the reference
to Ellis-Don. I shouldn't get into any sort of surmising, but that
would be the only.....

Mr. Bullbrook: No, I agree you shouldn't, because.....
Your evidence came through to me before with great reason and

Sept/11/73
5.15-5.20p.m.
B.A.

(Mr. Bullbrook)

acceptance on my part that your normal M.O. was that after ~~the~~ having been given information you made these notations in order to remind yourself to do something.

Mr. Fleck: Yes. I don't think ~~that~~ ^{this} has a reference to that, but there are times when I do make notations that would relate to the desire to have a meeting in the future with someone.

Mr. Shibley: Not only that, but ~~in~~ ⁱⁿ your diary on your Day-Timer you also noted for ~~the~~ November 9th, a G.G. letter to remind you to request the narrative, so I don't think that is a possibility.

Mr. Fleck: Yes, that's correct.

Mr. Chairman: I am looking round, Mr. Fleck. It doesn't look as though there is anyone else ^{who} wants to ask any questions.

Mr. Renwick: You have defeated me. _____

Mr. Chairman: Thank you, Mr. Fleck.

Now, Mr. Shibley tells me that he has made arrangements for Mr. Tamblin, is that right?

Mr. Shibley: Yes, I had arranged for Mr. Tamblin to be here at eight o'clock and I have just had Mr. Bell call him and ask if he could be here earlier, at 7.30 pm.

~~Mr. Shibley~~ ^{to him that} I would like to deal with him, as I have promised ~~I would~~ ^{to him} this evening. I don't know how long he is going to be. I don't expect to be too long with him, and then we could go on to Mr. Candy immediately afterwards ^{either} Mr. Candy or Mr. Cole, depending on how Mr. Candy's cold and health in general stand up.

Mr. Genest: ~~Mr.~~ If he is holding ^{up} as well as I am, he's not in good shape.

Mr. Shibley: I don't mind. I will take either Mr. Cole ^{or} Mr. Candy after...

Mr. Genest: ^{But then he's thin.} What did Caesar say? Lean and hungry.

Sept. 11/73
5.15-5.20 p.m.
B.A.

Mr. Shibley: But if you are agreeable, what I would like to do is to rise now, Mr. Chairman, and reconvene at 7.30 p.m. and take Mr. Tamblyn's evidence *then*.

Mr. Chairman: Tonight you hope to hear Mr. Tamblyn and Mr. Candy.

Mr. Shibley: Or Mr. Coles. How do you feel about that, Mr. Genest?

Mr. Genest: I prefer Mr. Coles to go on ahead of Mr. Candy.

Mr. Chairman: That is not what Mr. Candy is indicating. ~~See~~ See, he is behind you.

Mr. Genest: He wants to get it over with, I know.

Mr. Shibley: I will deal with Mr. Coles tonight, if you wish. It doesn't matter to me. I will deal with Mr. Coles if that is your preference, Mr. Genest.

Mr. Genest: I'll talk to you.

Mr. Shibley: Okay.

Mr. Chairman: Well, I think I indicated to one or two people, and I am not sure to whom, that probably our starting hour would be at eight tonight, rather than 7.30. Because of the length we have taken with various witnesses, it would appear that this is the logical time to break, so that, Mr. Moore, I would ask you to try to contact any of the committee ^{be}members who aren't here to tell them that 7.30 p.m. is the time, and ^{if} the press people are speaking with their fellow members of the press, perhaps they would also indicate that time.

Now, one more matter. The main door of the building, I don't think will be open.

Mr. Bullbrook: I've had a report on that.

Mr. Chairman: Well, we will have to take it up with the Speaker.

Mr. Bullbrook: We should have taken that up with Mr. Fleck while we had him. If he can't open the main door, no one can.

Sept. 11/73
5.15-5.20p.m.
B.A.

H-2344-4

Mr. Chairman: The east door will be open. ~~There~~ ^{deal} there are attendants on the east door; I guess it has to ~~be open~~ security. I agree that ~~was~~ when a public meeting is being held in here it would seem that the front door of the Parliament ~~Buildings~~ Buildings should be open.

Mr. Bullbrook: I just wanted to point this out to you, that I didn't care about the public. I was ~~purely selfish~~ ~~I don't care about the public.~~

Mr. Chairman: Well, it was purely selfish. the east door is going to be open

(H-2345 follows)

(Mr. Bullbrook)

purely selfish. I don't like walking around the building.

Mr. Chairman: Well, if it's purely selfish, the east door is to be open and there are attendants on it.

~~Mr. Chairman: Well, if it's purely selfish, the east door is to be open and there are attendants on it.~~

~~Chairman~~

The committee adjourned at 5:21 o'clock, p.m.

2346 to follow

MEMBERS

Committee members:

J.N. Allan

J.E. Bullbrook

I. Deans

M. Gaunt

L.C. Henderson

R.G. Hodgson

W. Hodgson

J.P. MacBeth (Chairman)

W. Newman

J.A. Renwick

G.W. Walker

Secretary of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC

James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC

Gregory Rice

G.D. Finlayson, QC

J.B. Cronyn counsel:

J.B. Eberle, QC

Senior vice-president,
John Labatt Ltd.:

J.B. Cronyn

Deputy Minister of Energy:

R.M. Dillon

Chief executive officer,
Office of the Premier:

J.D. Fleck

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Tuesday, September 11, 1979

Evening session

2346-2378

Sep. 11/73
7.45 to 7.50 pm
fvkLEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee resumed at 7:45 o'clock, p.m.,
in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order.

ROBERT TEUDAR TAMBLYN, Sworn

Mr. Shibley: Mr. Tamblyn, you were formerly senior partner of the firm of Tamblyn, Mitchell, and I think you're now ^{d/} Chairman of the Board of that company, somewhat independently of it, as a senior consultant. Is that correct?

Mr. Tamblyn: Yes, that's correct.

Mr. Shibley: Would you give the committee some understanding of your background, ~~and~~ ^{and} experience, training?

Mr. Tamblyn: I found myself somewhat accidentally in the air conditioning business in 1946 working with the Canadian Ice Machine Company Limited. I persevered there for 12 years, working in the field of air conditioning design in the days when it was ~~rather~~ fashionable for contractors to do design in this work. I was the manager of the air conditioning division, which was approximately half the company. I left the firm in 1958 to greener pastures, involving the ~~mechanical~~ consulting business in the field of design of mechanical building services, specializing still in the design of air conditioning systems. I have been in that field until this year when, doing something of an arabesque, I moved into a new field for me and, I think, perhaps a new idea entirely of doing only concept design. That will be my work from now on.

Mr. Shibley: And your firm, when I say your firm, the firm of Tamblyn Mitchell, has been engaged as mechanical engineers on a great number of very large projects?

Mr. Tamblyn: Yes, I think we have done 47 office buildings of 50,000 square feet or more in sizes up to about 2 million square feet.

Mr. Shibley: And you headed up the work of that firm for the years that you've indicated?

Mr. Tamblyn: Yes, I had some influence on the design.

Sep.11/73
7.45 to 7.50 pm
fvk

Mr. Shibley: Is it fair to say that in the field of design, maybe not fair for you to say this, but my understanding from others is that you're considered a dean in the field of design of air conditioning systems.

Mr. Tamblyn: That's a very nice goal to shoot for. I'll try my best.

Mr. Shibley: I should tell you that that was universally the commentary made.

Now, then, would you please, in your own —

Mr. Finlayson: Mr. Chairman, in view of the fact that Mr. Moog has already testified ~~and~~ that there are severe differences of opinion between he and this witness with respect to certain property matters, I don't think my friend —

Mr. Shibley: Oh, I'm sorry.

Mr. Finlayson: —, should lead us to this man's^s qualifications. Mr. Moog has made it quite clear that he is no admirer of Mr. Tamblyn^{and}, I think with great respect, that if my friend wants to qualify this witness he ought to let him qualify it out of his own mouth.

Mr. Shibley: I'm sorry, Mr. Finlayson. I didn't realize —

Mr. Finlayson: Mr. Moog has testified that this man pirated his air conditioning system and has been selling it ~~xxx~~ around the province and he's ~~xxx~~ mad about it. That was his testimony.

Mr. Chairman: I'm not surprised at Mr. Finlayson's objection because we've got into the business of expert witnesses before and I think we were placing Mr. Tamblyn somewhat in that position. But I realize that Mr. Moog had questioned Mr. Tamblyn, ^{as}

Mr. Deans: Mr. Chairman, without engaging in this for any length of time, I can recall Mr. Moog discussing ~~Mr.~~

(Tape H-2347 follows)

September 12, 1973
7.50 - 7.55 p.m.
M.R.

Mr. Deano
~~Mr. Deano~~

~~Mr. Deano: I don't recall Mr. Moog discussing~~ Mr. Tamblyn's use of what Mr. Moog claimed to be his system. I don't recall him ever questioning Mr. Tamblyn's abilities at any time. I think he may have said something about ~~the~~ system, but I don't remember him ever saying anything about Mr. Tamblyn's abilities ~~as~~ *as*

Mr. Finlayson: No, he did not. But ~~these~~, as I say, in view of the fact that there is this obvious ill-will between the two I think, with respect, that the witness ought to be permitted to qualify himself and then you gentlemen can make up your own minds.

Mr. Chairman: I don't want to over-emphasize the ill-will factor but I do realize the point you're making, Mr. Finlayson. I don't remember Mr. Moog emphasizing any ill-will particularly or even mentioning it, but that there was a disagreement between them to the point where I don't think that we should regard Mr. Tamblyn as an independent expert in the sense that the last question might have ~~been~~

Mr. R.G. Hodgson: I'm not aware that we should regard Mr. Finlayson's recent statements, whether we should regard them as evidence either.

Mr. Finlayson: Well, I'm not asking you to regard them as evidence. I'm simply asking my friend if ~~would~~ ^{he} would simply ask the witness to state his own qualifications and not lead him on that point.

Mr. Shibley: Well, all right, Mr. Finlayson. I had forgotten that Mr. Moog was alleging that Mr. Tamblyn was ~~proving~~ his system so I will start back again, ~~and~~ Mr. Tamblyn, would you please then for the committee indicate some of the buildings for which you have been responsible in designing the system?

Mr. Tamblyn: Well now, would you like me to refer to ~~buildings which~~

September 11, 1973
7.50 - 7.55 p.m.
M.R.

(Mr. Tambllyn)

to buildings which I am personally responsible for? There are very few. Or would you be interested in the firm of Tambllyn Mitchell and Partners and what they have done?

Mr. Shibley: Well, that's the firm that you headed and yes, let's talk about the firm's responsibility.

Mr. Tambllyn: We have been involved in some office buildings in Toronto, including the Richmond-Adelaide Centre, including some of Canada Square's buildings; the Ontario Institute for Studies in Education; the Transamerica Building, 390 Bay Street; Parkway Place, a two million square foot development for Hammersmith ^{on} in Calgary; a 350,000-square foot building in Calgary for City Wall and another one of roughly similar size in Vancouver; a building in excess of one million square feet in Ottawa for the Department of External Affairs.

Mr. Shibley: Is that the Pearson building?

Mr. Tambllyn: Yes.

Mr. Shibley: And, incidentally, in that connection, with that building, would you care to comment on the size and nature of the system?

Mr. Tambllyn: Yes. The system is one of fairly traditional, all-air type design. Without wishing to bore anyone perhaps I should say that we tend in our business ~~to~~ to divide or categorize the systems as to the type of system used in the perimeter space. Systems are much of muchness for interior space; the perimeter systems are much more expensive and differ somewhat more. So one tends to refer to categories of all-air systems in which air is the sole agent used for cooling in the perimeter areas of the building and air-water systems in which air and water are taken to little units in the perimeter offices, sometimes called induction units.

I could say that in Toronto, for instance the air-water system has been much more popular. It takes much less space

September 11, 1973
7.50 - 7.55 p.m.
M.R.

(Mr. Tamblyn)

because a one-inch water pipe will carry about as much cooling as a 20-inch air duct, and so naturally the building is cheaper to build with a smaller services. The system is also about 50 cents cheaper for air-water ~~and~~ in larger buildings, and so we have ended up in Toronto with possibly 200 buildings with airconditioning systems, perhaps 150 of them would be air-water type, and perhaps 50 would be of the all-air type design.

The all-air type design, being somewhat more expensive in large buildings, is one which is usually adopted by more sophisticated users, including Canada Square, and it, in turn, consists of two general types. Those which operate on ~~and~~ constant air volume and those which operate on variable air volume. ~~Perhaps of the 50~~

H-2348 to follow

H - 2348 - 1

(Mr. Tamblyn)

~~... air volume and those which operate under air-water~~
~~systems~~. Perhaps of the 50 systems here in Toronto there might be eight or nine which involve variable and the rest would be of constant air volume. The all-air systems offer quite a nice bonus in the sense that they don't suffer from change-over problems like the air-water systems. They have a better purging action for removal of smoke from perimeter offices; they have a better response to a need for heating or cooling, a faster response, particularly in winter, when there is some need for cooling.

The variable air volume category of all air systems is one which conserves energy primarily. It is neither much more ^{per} cheap ~~or~~ much less cheaper, but is less expensive to operate. Now I think possibly Canada Square have been pioneers in introducing the idea of an all-air system with the variable volume feature in Canada, starting with their building at 2200 Yonge Street. There have been other variations of variable all-air type systems. To the best of my knowledge they heard of this system through engineers who were working in Detroit with a similar system for Michigan Gas. I can't recall the ~~names~~ names of the engineers involved particularly well; I believe one name sounded like Masimoto, and a chap by the name of Robert Michaud in Milwaukee and Minneapolis is doing rather similar work, has been for a number of years.

The all-air systems have distinguished themselves over other types with very good performance records. This assumes, of course, that they have been well designed, well detailed, and well operated. One of Canada Square's buildings at OISE has a particularly distinguished record having complaints something like 10 per cent of a typical prime real estate in downtown Toronto. To give some numerical value to this, the complaints in typical office building are acceptable if they are not greater than say one per day per 100,000 feet, and some of the all-air systems,

H - 2348 - 2

(Mr. Tambllyn)

including a number that we have designed, and of different types, I might say, complaints have ranged as low as 10 per cent of that.

So these are the arguments that are sometimes used when it is worth you try to persuade someone that ~~it is worth~~ spending a little extra to have that kind of system.

Mr. Shibley: Just dealing with the question of what we might call patent or inventive rights, you mentioned that the idea was something having to do with Michigan Gas. Are you saying this is an adaptation of a system otherwise developed in Michigan?

Mr. Tambllyn: The system I examined in the Michigan Gas building some 16 or 12 years ago was rather similar to one which was used at 2200 Yonge. My recollection is a bit hazy but I think that 2200 Yonge departed from Michigan Gas on the basis that a fan room was arranged for every floor instead of a central fan room for the whole building, but the general air distribution and control was similar, the general arrangement of ducts was similar.

I believe that the idea of ^{Floor Floor} by ~~the~~ fan rooms was a good one, incidentally, which I was told at the time was based on the fact that ^{the} ~~a~~ standard unit of measurement allowed the developer to rent the fan room if it was located on each floor. Furthermore, I think it was either assumed in the beginning or soon proven in practice that the ^{Floor Floor} by ~~the~~ fan room was a good idea from the standpoint of rentability, and from the standpoint of offering tenants a service after hours in case they should need it.

Mr. Shibley: With respect to what might be considered unique unto the Canada Square system as compared for example with the Michigan Gas system, or other systems developed 10 or 12 years ago elsewhere, is it - can you tell us what, if anything, has been added that's unique under the Canada Square system?


Mr. Tambllyn: I think that the method of distribution

H - 2348 - 3

(Mr. Tamblyn)

and control are ~~similar~~ essentially similar. The idea of
the ^{floor floor room} by fan has been carried on in all of the Canada Square
buildings with which we are familiar.

Mr Shibley: Right.

Mr Tamblyn: Recently, and before the OISE building, more recent ly
I should say, not very recently, an architect with Canada Square
had an idea that instead of bringing air up from the floor below
into a sill which would actually rob a little space from the
perimeter, that it might actually be brought up within the wall
itself. I assisted with some experiments and mock-ups which
yielded the 

Tape H - 2349 follows

Sep. 11/73
8.00 to 8.05 pm
fvk

(Mr. Tamblin)

~~that it was actually brought up about 11:00 AM~~
~~in connection with some experiments and work done which was very~~
information that this was, indeed, possible ~~and~~ it was
done with some success on both the OISE building and the Transamerica
Building, capturing up to a foot or so from the system which had
been employed at 2200 Yonge Street and returning this to useful
space in the building. I believe I heard the Canada Square
architect say at one time that he had applied for a patent on
this idea, and it may be that there are other things in Canada
Square procedure which are patented, but since I know of none which
are unique, except this one, I'm not sure that ~~that~~ there are any
others.

Mr. Shibley: The only unique feature is the one
you've just mentioned?

Mr. Tamblin: This is all I'm aware of.

Mr. Shibley: That you're aware of?

Mr. Finlayson: Just with respect, the ~~fact~~ ^{fact is} that the
testimony is that we do have a patent in Canada on this ~~is~~ system
and the witness says he thinks we applied for one, ~~now~~, are we
going to turn this thing into a patent infringement procedure?

Mr. Shibley: No, I'd like though, through some witness
of Canada Square to establish what patents you say you do have,
because I don't know that it's in evidence yet.

Mr. Finlayson: I was referring that it was the
evidence of Mr. Moog.

Mr. Shibley: Yes, he has said, but he's used it
in very broad terms. I'd like some specific information as
to that.

Finlayson:

Mr. ~~Finlayson~~ We can file that with you, Mr. Shibley.

Mr. Shibley: Yes.

Mr. Tamblin: I'd be interested in seeing ~~the~~ the
patents.

Mr. ~~Shibley~~ Finlayson: I'm sure you would, Mr. Tamblin.

~~Mr.~~ Mr. Tamblin: I haven't been interested up to this

Sep. 11/73
8.00 to 8.05 pm
fvk

(Mr. Tamblyn)

point but I believe that they're available to anyone to enquire about and you just go and ask for the patents. I haven't been interested so far to do that but now, ~~xxxx~~ at this point, if it becomes germane to the discussion I will.

Mr. Shibley: I am not ~~saying~~ suggesting that we interrupt right now. I'm just putting Mr. Finlayson on notice that I'd like to have production ~~for~~ some ~~xx~~ specific list of *patents* ~~given~~. I gather you have ~~given~~ quite specific understanding of the installation ~~of the~~ in the OISE building and in the Transamerica Building and in the Canada Square Building.

Mr. Finlayson: He installed it in the OISE building.

Mr. Shibley: I realize that, Mr. Finlayson.

Mr. Tamblyn: To be a little bit more specific, I would say that I do have a good understanding of the concept and probably very little of the detail.

Mr. Shibley: Yes, so that when you make observations as to comparing that system with others you're speaking from first-hand knowledge?

Mr. Tamblyn: Yes.

Mr. Shibley: And in respect of that comparison the only difference that you identify is what?

Mr. Tamblyn: The difference of that with which?

Mr. Shibley: With the Michigan Gas & system, for example?

Mr. Tamblyn: Well, Michigan Gas, as I recall it, was a central type system fed from central fans, not fed on a ~~fine~~ floor-by-floor basis. I believe that the air was brought from the floor below to underneath the window in a rather traditional way, rather similar to the way in which ^{it} was handled at 2200 Yonge Street, which was done shortly after the Michigan Gas, ~~Wick~~ and with some assistance as I understood, from the same engineers.

Mr. Shibley: How would you compare the system in the Transamerica Building with the system in the IBM building that

Sep. 11/73
8.00 to 8.05 pm
fvk

(Mr. Shibley)

Y&R installed?

Mr. Tamblyn: I think the system in the Transamerica Building and, indeed, in 2200 Yonge, OISE and the one proposed for Hydro are excellent systems. I am very pleased to be able to say that. We are not always allowed to do what we'd like to recommend and we're certainly not always allowed to even carry very far with the idea of an all-air system, because it bears an automatic price penalty. But, in terms of the one in the Parkway Place, it was similar in some respects. It was a central system feeding on a ~~variable air~~ ^{constant} volume basis to the perimeter ~~at least~~ ^{at least}. I think it was constant volume in the interior, but it ~~was~~ had some of the aspects of systems which we had done with Canada Square. It was probably more similar to many systems being installed in the States at this time, ~~and~~ ^{but} our primary inspiration, if you can call it that, came from seminars which we attend regularly throughout the ~~x~~ States and systems which we examine by the dozen, I might say, in American cities.

Mr. Shibley: You were responsible for the intended design that was part of the Y&R proposal to Hydro. Is that correct?

Mr. Tamblyn: Yes, that's true.

Mr. Shibley: Would you please comment upon that system

~~AS-2349-3~~

(Tape H-2350 follows)

Sept. 11. /73
8:05-8:10 pm
PLG
8:05-8:10 pm

Mr. Shibley: And would you please comment upon that system as it compares with the system that Y and R are intending to install in the Hydro building?

Mr. Tambllyn: ^{You means} ~~is~~ the one which they were proposing to put in the

Mr. Shibley: Yes. Compare the Y and R proposed ~~a~~ system, the system that was proposed to be included in the Y and R proposal, with the one which Canada ~~Square~~ Square has in fact installed.

Mr. Tambllyn: We proposed a system using ~~a~~ an all-air concept because of its low/complaint rate and high reliability.

Mr. Shibley: Just stopping there, the all-air system...

Mr. Tambllyn: Therefore it was one similar to the one which we find ourselves designing at the present time for Canada Square. It had some essential differences. It was cheaper, for one thing. That is not always a merit because usually ~~there are~~ ^{there are} trade-offs. In this case there were. It involved ~~free~~ ^{free} cooling with ~~a~~ ^a water tower instead of with an outside air cycle and thus avoided the use of double fans ~~and~~ ^{and} mixing chambers and quite a few controls. This aspect was subsequently ~~not~~ adopted by the Canada Square group as being a suitable thing to ~~add~~ ^{add} into what they were by this time calling their concept, and so the Hydro building will be a blend of that particular idea and this. Other than that, we had differences about how to handle the perimeter space. Our thought as to the best way to do it was the heat provided by standing radiation under the window, instead of air coming from under the floor and through the wall and delivered through the sill. The reason that we felt that the heat under the sill was logical was that when the building is unoccupied, which is for more than half of its total existence, heating could be accomplished with a 40-horsepower pump ~~in~~ ⁱⁿ a building that size, instead of 1,000-horsepower fans, so there was some difference in energy which amounted to a sizeable saving in a year's operation.

Now if the form of heat is ^{as} with the Canada Square arrangement,

by terminal reheat coils in the ducts, ~~and~~ ^{then} one has to run fans in order to get the air through the ducts in order to get the heat up at the wall. ~~■~~ Having put the radiation underneath the window as a standing element, ^{we} were then able to incorporate the cooling air ^for the perimeter in the same ducts that were feeding the interior, so that it was simply an enlargement of ~~the~~ that system and the whole system was incorporated in one floor. We offered this as being what we felt was an advantage because...

Mr. Tamblin: Tamblin, Mitchell offered ^{this} to Y and R [REDACTED] as an advantage, and as I say, [REDACTED] Subsequently the Canada Square discussed this, that here was an idea which might actually simplify and save money on the duct work so that we would be feeding ~~for~~ through one set of ducts instead of two, simplifying and lessening the requirement in the false ~~area~~ ceiling. But actually the pros and cons of these things were highly subjective. The Y and R group simply allowed us to proceed with the recommendations we made, so we were offering a system which would be approximately 50 cents cheaper per square foot, because it had the simplification of ~~one~~ duct work, ~~instead~~ feeding through one system instead of ^a ~~the~~ double system.

We offered it as having ^{an} advantage too from a standpoint of life safety, although I must admit, this has gotten to be a rather academic point, now that we find the gyro building is final-
~~ly~~^{ly} ~~being~~ ^{final-} ~~ized~~ ^{ized}. But we felt that the idea of actually breaching the ~~10th~~ floor was something that we would like to avoid. We would like the floor to be an integral smoke separation insofar as possible.

Mr. Tamblyn: We as engineers at Tamblyn, Mitchell and Partners proposed to Y and R that here was a system which avoided

Sept. 11/73
8:05-8:10 pm
PLG

(Mr. Tambllyn)

cutting through floors and ~~the~~ would retain the floor as an integral smoke separation, should there be a fire in the building.

Mr. Shibley: The method employed by Canada Square requires...

Mr. Tambllyn: The method which is employed by Canada Square does ~~have~~ breach the floor and come back up again through the air wall. ~~It is not a point~~, I make this point only in passing and not to make a very strong point of it because quite frankly, in a sprinkler^{ed} building, the likelihood of a fire is so remote as to make the point un...

Mr. Shibley: Mr. Tambllyn, to...

Mr. Tambllyn: But originally, before the decision to use sprinklers was made by Hydro themselves, this was something we felt might have some merit and we brought this up. And by the way, when we ~~talked~~^{talked} to Canada Square later about the idea of a somewhat different arrangement, they thought about it seriously, I think, and they found in their own way ~~their~~[✓] excellent operating staff I might say, ~~and found that they were very good at it~~
~~that they didn't do it as well. Probably you don't care~~

Tape H 2351 follows

September 11, 1973
8.10 - 8.15 p.m.
M.R.

(Mr. Tamblyn)

~~... saying that~~ ~~Tamblyn~~ found there were some trade-offs that they didn't like, as well. Probably you don't care what these are ~~but~~ but there were some, and as a result they ended up with a system very similar to ^{the} one they had used before and which incorporated only ^{one} new idea which we had offered as part of a group of ideas ^{that} ~~that~~ we had ~~formerly~~ formerly used in the Y and R proposal.

Mr. Shibley: Mr. Tamblyn, I think what this committee is really interested in, ~~you~~ you have the great advantage of having very precise understanding of the system that Y and R would have installed in the building had they been awarded ^d the contract. You also have the advantage of knowing the system which is in fact going in at the instance of Canada Square. In a summary way, ...

Mr. Finlayson: Well, also they were the ones who supported the Ellis-Don proposal too.

Mr. Shibley: That's fine.

Mr. Finlayson: They were on three of these.

Mr. Shibley: Right. So that at the moment I'm just dealing with these two for comparative purposes. I'd like you to compare the ~~systems~~ systems in terms of quality and cost, just in a summary way.

Mr. Tamblyn: Okay. ^{I'd like to comment about the Ellis-Don.} I'd like to say that ~~that~~

it's fashionable to be working for several people at once but we don't believe in that and our decision as a company was that we had to work for one person. We were invited by Ellis-Don and ~~we said~~ we were already working with Y and R, and because we suspected a conflict with Canada Square after we made the decision we'd work with Y and R, we went and told them about this.

Mr. Shibley: Right.

Mr. Tamblyn: And so we were working for only one person. Subsequently I must say that Smith, whom I know, partly as a friend, partly as a business associate, called up

September 11, 1973
8.10 - 8.15 p.m.
M.R.

(Mr. Tambllyn)

and said, "Could you give me any idea of what the operating costs would be of a large building?" and I said, "Well, look, I don't want to be ^a party of this proposal of yours but I will send you some of the BOMA experience report and I'll put it in the mail next day", which I did.

And there is a letter on file which would perhaps appear that we were trying to work for Ellis-Don but this was a rather perfunctory sort of note which I sent off.

Mr. Shibley: I understand that, Mr. Tambllyn.

Mr. Tambllyn: Now, what was the question you wanted me ...

Mr. Shibley: You were alert to avoid any conflict of interest in terms of the principal you were serving. That's what you are saying?

Mr. Tambllyn: Yes.

Mr. Shibley: Now, returning to the comparison of the system with which you were working in depth on behalf of Y and R, you were well into the concept of that system as it was part of the proposal of Y and R for the Hydro building and also your firm was ultimately engaged by Canada Square to assist in respect of the actual installation for Hydro ...

Mr. Finlayson: With great respect, my understanding is that Tambllyn's have been the consultants for Canada Square for eight years. Now, am I wrong in that?

Mr. Shibley: What difference does it make in terms of the question I'm putting to the witness?

Mr. Finlayson: Well, no, but you were talking about conflicts of interest here a minute ago and ~~the~~ you seem to be trying to suggest that when they were assisting Y and R in their proposal they had no connection with Canada Square or with Ellis-Don. Now the witness has dealt with Ellis-Don but certainly it's my understanding that these people have been consultants and I think that the ...

September 11, 1973

8.10 - 8.15 p.m.

M.R.

Mr. Shibley: I don't know what you had for supper but I'm only interested in getting from this witness the benefit of a comparison of the two systems, having regard for his understanding of them both, and I'm not terribly concerned about who he was retained by or for how long. Simply that, Mr. Tambllyn, you are familiar with both systems, ~~the~~^{the} one that was proposed by Y and R and the one that is being installed by Canada Square. Are you?

Mr. Tambllyn: Yes, I am. And we did propose for Y and R ^a system which has points of similarity and radical points of difference with the one which Canada Square had installed before with our help and the ones which they are installing now with our help.

Mr. Shibley: What I think the committee wants to know from you is, how do the two systems compare in terms of quality and cost?

Mr. Tambllyn: My personal hope will be that we will have a performance record which would be that each would have a good performance record, excellent performance record, when compared with any other kind of system that you would typically find in buildings today.

I don't really wish to say that one would be better than another. I don't think that there would be much in it.

Mr. Shibley: When you say you don't think there would be much in it, are you ~~we've~~^{we've} got to be clear on that, ~~are~~^{are} you saying that the systems would be comparable?

Mr. Tambllyn: Yes. I personally feel, as I said before, this is partly subjective ~~a~~ matter.

Mr. Shibley: Yes.

Mr. Tambllyn: There are ~~some~~^{some} ~~there are~~^{there are} points of difference which yield to pros and cons and there are some which favour each approach. Okay?

Mr. Shibley: All right.

Mr. Deans: My understanding, if I may, Mr. Tambllyn, was that you indicated that in the Y and R proposal there would

H - 2352 - 1

(Mr. Deans)

~~There is a possibility~~ ~~that~~ be a substantial saving with regard to both installation and operating cost? Am I wrong in that?

Mr. Tambllyn: These are among the pros and cons that I said differed, and there are some which favour the Canada Square approach, may I say.

Mr. Deans: I see, but I wanted to understand what you are saying; that's all.

Mr. Tambllyn: In other words, I will have to say on behalf of Canada Square, they looked past these savings and said we like our system very much, and the points that we see in favour of this system are ones we would like to incorporate at Hydro.

Mr. Shibley: The point is at the moment I was just getting to the question of quality. Insofar as you are concerned, the two systems are comparable in terms of quality?

Mr. Tambllyn: Yes, I feel that both systems would have delivered excellent results and I could not really not expect any differences, ~~that~~ ~~should~~ be measured by the usual measuring sticks.

Mr. Shibley: All right. Now then in terms of cost, ~~what~~ what differential in terms of cost per square foot, capital cost to the building, is reflected in the ancillary features, if you like, of Canada Square that they on a subjective basis, ~~as~~ as you put it, decided to incorporate in their systems even though it didn't alter the quality in your thinking? How much extra?

Mr. Tambllyn: Well, I think the figures we talked about at the time were of the order of 50 cents a square foot.

Mr. Shibley: And that is capital cost?

Mr. Tambllyn: Yes.

Mr. Shibley: Against the gross square footage?

Mr. Tambllyn: Yes.

Mr. Shibley: So in the building -----

H - 2352 - 2

Mr. Tambllyn: Gross square feet above grade.

Mr. Shibley: So that in a building of 1,300,000 square feet you would say the additional cost would have amounted to \$650,000. Is that correct?

Mr. Tambllyn: These are rather round figures, but I think these were ones that were typical of ones we were presenting at the time.

Mr. Shibley: The system that's being incorporated in the Hydro building by Canada Square would cost \$650,000 more than the system that was contemplated in the Y and R proposals?

Mr. Tambllyn: Well, the piece of design which was borrowed from the Y and R proposal that we offered as our shopping basket of ideas, and was put into the present Hydro design, would have saved probably 10 or 15 cents. So they would have come slightly closer together.

Mr. Shibley: I see. It would not have been that much, it would have been more ~~-----~~

Mr. Tambllyn: Slightly less than that perhaps. And again I suggest that if you wish to know what the Hydro building mechanical systems will cost, the proper source of information will be, the ultimate, will be the contractors who are working on it, who will eventually work on the job.

Mr. Shibley: Unfortunately, Mr. Tambllyn, we are not being permitted that information under the terms of the contract, so we ~~-----~~

Mr. Finlayson: With great respect, I am just a little puzzled by this line of questioning, because Mr. Lorne Mitchell was called as a witness just to produce some files by you, Mr. Shibley, and he is also the author of a letter on the letterhead of Tambllyn, Mitchell and Partners, Limited, dated July 5th, 1973, which is attached to Mr. Moog's opening statement, in support of the contention set out in page 15 of that opening statement that the difference between the value of the mechanical system of Canada Square and of Y and R is \$2.50 and not 50 cents as this

H - 2352 - 3

(Mr. Finlayson)

witness has testified.

Mr. Shibley: In fact, this witness is now testifying that it is even less than 50 cents.

Mr. Finlayson: Right. Now it would seem to me that, since you did have Mr. Mitchell in the box, you might have asked him if, since he is the author of the letter which Mr. Moog relied upon for the \$7.50 figure as opposed to the \$5.00 figure, which Mr. Tatham testified to, ask ^{ed} him for an explanation as to the ~~-----~~

Mr. Shibley: Mr. Chairman, the reason I had to call Mr. Mitchell was to get production of his file because, through some source of communication or misunderstanding, I am not sure how it happened, but when I tried to interview Mr. Mitchell and get the file, I was refused it. I called him only to get delivery and production of the file. He was not called as a witness to testify, but simply to enable me to get possession of his file and that's why I didn't pursue any line of questioning with Mr. Mitchell.

Mr. Finlayson: But Mr. Mitchell is looking after this contract, not this witness. This witness has testified he is semi-retired.

Mr. Shibley: No, but, Mr. Chairman, I have been asked why I didn't ask/question. What happened was during the recess that we had of two weeks I attempted to interview ~~Mr. Mitchell~~ and Mr. Mitchell had cancelled an appointment with me at the instance, I believe, of Mr. Johnson of Canada Square, who said the basic instruction from counsel was ~~-----~~

Mr. Finlayson: Well we discussed that and I explained

Mr. Shibley: I know. I just want you to understand, Mr. Finlayson, however; you have asked why I didn't ask any questions of Mr. Mitchell when he was called. ~~He was requested to attend~~

September 11, 1973
8.20 - 8.25 p.m.
M.R.

(Mr. Shibley)

~~... he was requisitioned~~ He was requisitioned to attend with his file so that I just could get possession of his file. That's all. I ~~wasn't~~ wasn't in a position to ask him any questions because I didn't know what was in his file.

Mr. Finlayson: Well, with respect, that he is the man who is working on this job, who wrote the letter which Mr. Moog introduced in evidence. I thought if anybody should be asked about the differential between the Y and R and the Canada Square, it would be Mr. Mitchell.

Mr. Shibley: Well, Mr. Chairman, I've interviewed Mr. Mitchell and he puts it in the opposite context and says that Bob Tamblyn really had everything to do with it except for his writing of those two letters. And that I should be able to get this information from Mr. Tamblyn rather than him. Now that's my advice and instruction from Mr. Mitchell.

Mr. Tamblyn: The last thing I'll do is argue with Lorne Mitchell and I must admit that he is much closer to things right now than I am. I am really recalling how I saw it at the time when we were discussing with ~~some~~ Canada Square what prices would be.

Mr. Shibley: Which is the material time in terms of the deliberations of Hydro and the parties who were making submissions, I might say. *So if we could just return —*

Mr. Tamblyn: I'd like to see the wording of the Mitchell report, by the way, because ~~well~~

Mr. Shibley: Well get to that, Mr. Tamblyn. For the moment, what I want to — I want to just go forward with what you were saying, you've got comparable systems at a differential in cost of — you had thought it might be as high as 50 cents a foot but then you said it might be *as less than that.*

Mr. Tamblyn: Let's not quibble about ten cents. Let's call it 50 cents.

September 11, 1973
8.20 - 8.25 p.m.
M.R.

Mr. Shibley: All right. So, \$650,000 would be the differential in cost. Is that right?

Mr. Tambllyn: Yes.

Mr. Shibley: On this building?

Mr. Tambllyn: That would be my estimate, yes.

Mr. Shibley: Now, I just alert the committee that in the proposal of Canada Square they have on Page 4 asked for an additional cost per square foot per annum on the rental rate. This isn't capital cost allowance of 55 cents per square foot for the VVR mechanical system as an ancillary or supplementary charge. So that, in effect, it appears that in the proposal of Canada Square they have asked for a per annum rental payment of - over each of 30 years - of more than the additional cost of that system.

In other words, it comes to 55 - I'm sorry, it would come out to about the same, 55 times ~~1,000~~ one million two would be roughly \$600,000 a year for 30 years for a capital outlay of an ~~and~~ additional \$650,000.

Mr. Renwick: Do those figures, Mr. Chairman, mean what they say?

Mr. Shibley: Well, I'm just accepting ~~the~~ — Mr. Moog's submission in the proposal January 24th included the following statement: "In order to offer you these features without sacrificing the quality of the building we are obliged to charge a slightly higher rental than would be applicable to a less ~~intricate~~ intricate design. We must pass some of these additional costs on to you in our rental rate as we are unable to absorb all of these expenses ourselves. However, in order to permit you to assess our proposal we are setting out below the cost estimates which our architects and engineers have provided for these special features which have been calculated on the basis of additional annual rental per square foot of space. Feature item VVR mechanical system, additional cost per square foot per annum - 55 cents."

September 11, 1973

8.20 - 8.25 p.m.

M.R.

(Mr. Shibley)

So that on the net rental area of one million two is \$600,000 a year for features that I gather this witness is saying would only involve them in an additional capital cost of \$650,000. So they are recovering on an annual basis almost an amount - for 30 years - an amount equal to their initial additional capital outlay.

Mr. Renwick: There must be, Mr. Chairman, some explanation.

Mr. W. Newman: Mr. Chairman, in this respect, may I ask for instance under the Canada Square and the Y and R proposals, how many additional square feet of space are saved by the Canada Square proposal as against the Y and R proposal? I mean, how many more useful square feet of space will we have?

Mr. Tambllyn: I don't recall the exact width of the air space in the wall but I think it was of the order of an inch and a half.

Mr. Shibley: Differential?

Mr. Tambllyn: And I dare say that ^{well, for} the standing radiation we talked of ^{it} would be of the order of four and a half on the design that we were thinking of at the time at any rate, so a quarter of a foot on a thousand foot perimeter, I guess, ~~20,000~~ would be of the order of 5,000 square feet in the building.

Mr. W. Newman: Well, my only question ~~really~~ ^{is} in following up on that is that we saw the Y and R building - IBM was it we saw?

Mr. Shibley: Yes.

Mr. W. Newman: Which would indicate to me ~~the~~ the outlets that I saw there are much wider than the ones we saw at the ~~Trans~~ Transamerica building.

Mr. Shibley: ^{You must appreciate} ~~Just to differentiate~~ Mr. Newman, there were two parts to that building.

Sep. 11/73
8.25 to 8.30 pm
fvk

Mr. W. Newman:

Yes, I realize there were two, Mr. Shibley.

Mr. Shibley: And the system that we're talking about was that part — would you help me, Mr. Tamblyn, ^{with} ~~on~~ the all-air system?

Mr. Tamblyn: The standing radiation done for Y&R was thrown in. Because of the great rush, ^{it} ~~was~~ was just a piece of classroom radiation about seven and a half inches wide, not the type which we were ^{ultimately} ~~only~~ able to design for a thin-line type of standing radiation. In any case, the air wall ~~was~~ ^{is} one of the trade-offs that I spoke of before which would make the from-under-the-floor type system a good one. It does not involve what is normally referred to as rentable feet, because developers have a habit of holding the tape measure to the glass but what this developer could say was: "Yes, but my feet are also usable and usable to the extent of an additional 5,000 feet over the system we are proposing for Y&R."

Mr. Shibley: Correct me if I'm wrong, Mr. Tamblyn, but I'm not sure whether it was the Allstate building or the IBM building, but it had a relatively narrow unit on the wall-line.

Mr. Tamblyn: The IBM was the system which was variable all-air, and it had a piece of standing radiation ^{around} ~~which~~ I call classroom radiation, ~~was~~ about seven and a half inches wide. The other one was the Allstate building and it had ^{the} ~~a~~ typical air-water perimeter which had the typical 13-or-14-inch-wide little box which held the induction unit.

Mr. Shibley: Fine.)

An hon. member: Is yours an induction system?

Mr. Shibley: (So that, just to return to the matter, you've got a comparable system ~~is~~ being proposed but ~~at~~ at an additional cost of \$650,000 for an added additional annual rental of \$600,000 but for additional use of the space?

Mr. Tamblyn: Let me qualify a little bit and say something further here. I have no knowledge of the details of the system for the past year. I think I did hear something to

Sep. 11/73
8.25 to 8.30 pm
fvk

(Mr. Tamblyn)

the effect that the lighting system couldn't be four watts a foot any/more but probably had to be raised to five. Now, if that's the case, then this is going to affect the cost of the air conditioning whichever way it's done and that alone, I think, is probably ~~would~~ worth another 25 cents, per square foot. I don't know whether this happened or not but I seem to recall something like that.

Mr. Shibley: We haven't heard of anything ~~like~~.

Mr. Tamblyn: Again, there could have been other things.

It could be that somebody came along from Hydro and said: "We want to double the ventilation." I don't know where it ~~stands~~ stands just at the moment but that would be another effect. I think, in the beginning, ventilation rates, air-change rates, and other ~~things~~ things were quite comparable.

Mr. Allan: Mr. Chairman, I wonder if I could ask Mr. Tamblyn a question. It relates to whether or not that 5,000 feet is valuable to the tenant or not. Does it really—the fact that it is at the wall, and perhaps very few people sit ~~with~~ at a desk with their feet up against the wall—is that particular space of any real value to the tenant?

Mr. Tamblyn: I think it could be, on occasion. Three inches is still three inches. The curtains would hang out further ~~in~~ in front of the standing radiation and they would, therefore, intrude on the space by another three inches. And if you had a couch which was three inches too long it wouldn't fit. There are some situations where three inches make a lot of difference and some cases where it doesn't make any.

An hon. member: ~~I'd like to~~ ^{think} ~~talk~~ the end of my nose.

Mr. Tamblyn: I would certainly rather be in the position of talking about saving a 3 foot or so which is often the case ~~for~~ ^{for} some of the air-water systems that you see around town. Some of the systems in this town are 30 inches wide.

Mr. Finlayson: Mr. Chairman, could this witness be asked if he had anything to do ~~with heat~~ ^{that is, be} personally as opposed

(Mr. Finlayson)

to Mr. Mitchell of that same firm ^{had} has he personally anything to do with designing the air conditioning system which is going into the present Hydro building?

Mr. Shibley: Let's put it this way.

Mr. Finlayson: What's wrong with my question?

Mr. Shibley: What's wrong with it is that as at the time

Mr. Finlayson: The answer would be "no", that's what is wrong with it.

Mr. ~~Shibley~~ Deans: You not only asked them ~~them~~ but you answered ^{them} too.

Mr. Finlayson: I've got to.

Mr. Shibley: As at the time these proposals were being evolved, Mr. Tamblin, did you have to do with developing and designing and participating in the workup of the two systems?

Mr. Tamblin: I certainly had some discussions with the Canada Square group, not in particular with Mr. Moog, perhaps he did participate very briefly in some discussions.

(Tape H-2355 follows)

(Mr. Tamblyn)

~~...participator with Mr. Mace. I think participants did participate~~

~~very briefly in some discussions~~ I'm sorry to hear that he feels that we have stolen all his ideas, but certainly I did participate in early discussions some two years ago or whenever it was we were actually ~~after~~ after they had the award and we were starting to work with it, I did get involved with them in discussions, and even before that, because they were thinking of other things and we had been working with them on ~~Trans America~~ ^{Transamerica} and back and forth and talking to them quite often. So we had lots of discussions. But I am not the designer of the job, and neither is Mr. Mitchell, by the way. We have one of our senior associates in the firm, an excellent design engineer, is closest to it and responsible for it as far as the firm of Tamblyn Mitchell is concerned.

Mr. Chairman: Mr. Tamblyn, I think there are two times involved here. Mr. Shibley is dealing with the original proposition, and I think the point that Mr. Finlayson is making is the final building, and I gather that you didn't do much design on the final—

Mr. Tamblyn: No.

Mr. Chairman: But that you may have been in on the original proposition?

Mr. Tamblyn: Yes, I was involved in concept discussions originally, and not at all in ^{the} detail later on.

Mr. Shibley: Quite apart from the detail later on, do you now have an understanding as to the system that is going into the Hydro building?

Mr. Tamblyn: Well, unless it's changed, I haven't discussed this with my partners. I think it's the same system that we discussed. And I think it has the additions and deletions that I just attempted to describe. It is a minor variant from the ones that were used on ~~Trans America~~ ^{Transamerica} and OISE.

Mr. Genest: Well, do you know? I mean this evidence would be laughed out of a court of law. You're putting up this witness as an expert and he doesn't know, he presumes it hasn't changed, he's made no study. Mr. Shibley, ~~he's coming~~ ^{I'm coming} to the

(Mr. Genest)

conclusion that you're just selecting witnesses that can hurt Hydro and Canada Square. Are we going to hear from Mr. Mitchell?

Mr. Shibley: Mr. Genest, I'm going to take issue with that. I'm just sick and tired of receiving that kind of critical comment from opposite counsel. I am not selecting witnesses; this witness was fully appraised of the proposed installation for Y and R; he was very much involved and understood the installation which was being developed by Canada Square; his firm is presently engaged in installing the Canada Square system in the Hydro building, and to make the suggestion you've just made in the face of the interviews that I conducted with Mr. Mitchell—— just let me say something for once.

As I say, I'm tired of receiving this kind of abuse and I'm not going to sit here and continue to accept it, Mr. Chairman, at the instance of opposite counsel who consider that I'm unable to answer each time this kind of criticism is levelled. I have restrained myself up to this point of time ^{because} ~~because~~ I have tried to approach these things with equanimity but my patience is being driven to an extreme.

Now Mr. Tamblay is probably one of the most highly regarded people in the industry. Mr. Candy is sitting behind you and you can ask him that, you can ask Mr. Johnston that, you can ask anyone in the industry that. And the imputations that have been made, directed to him in terms of suggesting that he pirated something from Mr. Moog, I am going to ask him to comment on that, the suggestion that he isn't sufficiently informed when he developed the ^System for the Y and R proposal, and when his firm is actually engaged in installing the system in the Hydro building, is just ridiculous, so absurd, to challenge this witness's qualifications to comment as he is.

Mr. Chairman: Mr. Genest, I actually thought that Mr. Tamblay had been going out of his way to——

Mr. Shibley: That's the other part of it. I think he's been so temperate and he's gone overboard, in fact, Mr. Chairman, to be more than fair in terms of his comments in respect to Canada Square.

~~XXXXXXXXXX~~

Mr. W. Hodgson: But, Mr. Chairman, you have

to be fair too.

~~was~~ I've just ^{a/} come in recently into this hearing but ^{in answers} the ~~questions~~

I have heard from Mr. Tamblyn, ~~and~~ he hasn't made a positive ~~statement~~

~~about~~ ~~he thinks it is this~~ ~~I mean either he does or he doesn't~~

Mr. Genest: That's my ~~point~~ Mr. Chairman, I'm sorry

~~Mr. Chairman: Well, it that's the point then~~

(Tape H-2356 follows)

H - 2356 - 1

(Mr. W. Hodgson)

~~any~~ statement. He ^{says he "thinks it is this."} ~~is~~ I mean, either he does or he doesn't.

Mr. Genest: That's my point, Mr. Chairman.

Mr. Chairman: Well, that's the point that I -----

Mr. Genest: I am sorry I have used extreme language and upset counsel.

Mr. Chairman: I feel that Mr. Tamblyn is being so cautious with what he is saying that probably what he is saying is not going to be as harmful as you may think, Mr. Genest.

Mr. Genest: No, my point is that I am sorry, I ^{put} it in ~~temperate~~ language - it is late and I am sorry I used extreme language, but the point I wish to make is this. That we are asking this witness to give an expert opinion on an existing system - this is where we were moving - and the witness himself has cautioned that he is not sure whether what we have got now is what he looked at originally.

Mr. Shibley: ^{Oh, well} ~~insistent~~.

And

Mr. Genest: ~~Wait~~ I say - well that's how I understood him. Am I wrong in that, Mr. Tamblyn?

Mr. Shibley: Well, Mr. Tamblyn, I thought I heard you say that it is your understanding that it is the system that was settled upon at the time you were engaged.

Mr. Tamblyn: Yes, well I -----

Mr. Chairman: I think he said it was just an understanding Mr. Genest, and that he wasn't certain but ^{the Committee is} ~~was~~ listening to this.

Mr. Genest: No, but once you have that caveat, Mr. Chairman, please hear me out. I think that the evidence ^{that} has got to be looked at, is not very useful until you know that the witness has seen the system and can speak with ~~an~~ authority ^{on} it, You may be doing yourselves a lot of harm because it may turn out that it is not this man's fault, he has given you the caution.

Mr. Chairman: Well, Mr. Genest, let me comment on -----

Mr. Genest: That's where I am ^{portentous} ~~concerned~~ about because we may have to get into a place where we have got to call other

H - 2356 - 3

(Mr. Shibley)

eminently qualified to compare these systems. I am prepared to go back over that if necessary.

Mr. Chairman: I don't think Mr. Genest is *questioning his competence*.

Mr. Genest: I'm not attacking that. I am saying that the professor of surgery, if he is not sure it is the same patient, may have all kinds of qualifications, but his evidence isn't going to be useful *unless you know* ~~if he doesn't~~ know what body he is working on.

Mr. Shibley: Mr. Chairman, if Mr. ~~Johnson~~^{Johnson} of Canada Square wants to come forward and say, "Oh, but the system Mr. Tamblyn was talking about with us back a year ago or whenever we made our submission is different than what we are now installing," let him come forward and say it.

At the moment, Mr. Tamblyn, is ~~my~~ ^{Mr} understanding correct?

Mr. Chairman: Gentlemen, I am trying to -----

Mr. Genest: Could we have this out? I am sorry I am

upsetting
~~disturbing~~ Mr. Shibley, but let me just finish the point and then ~~Mr. Chairman~~ ^{Mr. Genest} But am I ~~wrong~~ ^{wrong} Mr. Genest, in ~~conclusion~~ you can make a ruling, Mr. Chairman. Can I ask a question?

Are we going to hear -- does the committee intend to call Mr. Mitchell

Mr. Chairman: I don't know. It may be as a result *of this*

Because you see
Mr. Genest: What I am faced with here is a conflict.

Mr. Shibley: I can tell you, Mr. Genest -----

Mr. Genest: Can I finish, Mr. Shibley? We are faced with a conflict between what Mr. Mitchell has said *and* ~~he~~ has committed his signature to on paper, a partner of the firm of which Mr. Tamblyn is the head, which seems to me - I am not an engineer - but it seems to me to be in direct contradiction to what Mr. Tamblyn is saying, and it just seems to me *as* a sort of semi-victim of the conclusions that are going to be drawn from this kind of evidence, that we are just not getting a picture, and we are going to have to call our own witnesses.

Mr. Shibley: If you would like Mr. Mitchell called, he

Sept. 11/73
8:40-8:45 pm
PLG

(Mr. Shibley)

~~Mr. Shibley: Mr. Mitchell will be called. I can~~
tell you that when I interviewed him, that was his expression to me, and he certainly left me of the impression that Mr. Tambllyn was the man who was best qualified to give the evidence that we required for comparison of the two systems, because he was most directly involved and that Mr. Mitchell was not.

Now Mr. Tambllyn, is Mr. Mitchell -- let me put it this way, prior to July of 1973, was Mr. Mitchell himself involved with either of these proposals?

Mr. Tambllyn: No, I don't think he was directly involved until writing letters from -- the two letters you referred to ~~XXXX~~ earlier, but he was in charge of the firm as of the first of April.

Mr. Shibley: Yes, so that Mr. Mitchell in terms of an understanding, however, of ~~a~~ ^{the} system that was proposed for Y and R is not as qualified as you to comment ~~you~~.

Mr. Tambllyn: No, he is not.

Mr. Shibley: And with respect to the system actually being installed in the Hydro building, he is not as qualified as you in terms of understanding what was proposed?

Mr. Tambllyn: Well, I think Mitchell would probably know of the change they made at midnight last night in detailing, which is a change I don't know about, and I don't know about the ones they made three months ago either, ~~any~~ ^{if} there was one.

Mr. Shibley: If any.

Mr. Chairman: All right. Now let me stop at that point. Are you submitting, Mr. Genest, that what was originally proposed is not the same as what Mr. Tambllyn is talking about.

Mr. Genest: I will just be quite frank. I have no idea.

Mr. Shibley: Well then, what the devil ~~you~~.

Mr. Genest: Just a minute!

Mr. Deans: You are in the same boat as Mr. Tambllyn.

~~Mr. Shibley:~~ You are not sure.

Mr. Genest: Well, I am in the same boat exactly. I am in the same boat as Mr. Tambllyn.

Sept. 11/73
8:40-8:45 pm
PLG

Mr. Deans: Well let's try and clear it up.

Mr. Genest: ..Exactly. My opinion isn't worth anything, and with great respect, with that change you ~~have~~ have, unless we know that he is sure ~~of~~ that what he is looking at is what we are giving evidence about, I think that his evidence isn't worth very much either. ~~With great respect.~~ With great respect.

Mr. Chairman: Now, Mr. Tamblyn has just qualified his position. I ^{have} said he has been a very careful witness.

Mr. Genest: I am not knocking Mr. Tamblyn at all.

Mr. Chairman: No, but if you have got some evidence to produce, I think maybe this is the time to produce it, that Mr. ~~Mr.~~ Tamblyn is talking about an entirely different system ~~than~~ than what was actually installed. Now do we have evidence of that nature, or do you have evidence?

Mr. Genest: I will just have to go home tonight and do some homework.

Mr. Deans: Let me ask a question. First of all, my understanding from driving on University Avenue is nothing is installed yet. Now, let's not get involved in that. I want to ask a question. Are you able, Mr. Tamblyn, to compare the system proposed by Y and R to the system proposed by Canada Square?

Mr. Tamblyn: Well, I am able to talk about the concept discussions we had, which is the kind of discussion that usually determines the framework of the budget, but let me make this clear; Canada Square had made a proposal before they called us in. They had settled ^{price} price. They knew what the contract was and they had some idea of what they were going to offer. After that, they said, 'well, you fellows did work for Y and R, but you have done other work for us and come on ~~in~~ in and we'll talk about maybe ^{you'll} you'll work with us in the Hydro building, and after the contract and so on was all settled, I suppose, we began to talk about systems and ~~blends~~ blends of this and that and arrived at some conclusions and went ahead.

Mr. Deans: Okay. Are you familiar with the Canada Square system up to April 1?

Sept. 11/73
8:40-8:45 pm
PLG

Mr. Tamblyn: Yes. Yes I am.

Mr. Deans: You are. And you would be able to tell us all about that system and compare that system to the system proposed by Y and R at least to April 1?

Mr. Tamblyn: Reasonably so, yes. Certainly in the latter three months I was not ~~am~~ I am sorry I had to qualify the question about the lights, because I am really not quite sure, ~~and~~ ^{and} probably those discussions were being held and finalized some time early this year and I don't know their exact determination.

Mr. Shibley: But apart from that, Mr. Deans wants to know whether you were fully conversant with the system that is actually to be installed by Canada Square as recent as April of this year.

Mr. Tamblyn: Yes. Generally speaking, and I think to the degree that you want me to say yes, Yes.

Mr. Deans: I mean I. ~~mean~~

Mr. Shibley: I am sorry, Mr. Deans.

Mr. Deans: Yes. I just want to be sure. You can then talk to us about the relative values of the two systems as you understood that they were going to be installed on April 1 of this year, and that any variations to that if Canada Square wants to bring those to our attention, we can then listen to. ~~xxxxxxxixixxxxxxx~~

Mr. Tamblyn: Yes.

Mr. Deans: Is that fair? And we won't ask you to tell us anything about the system from April 1 on and please, for God's sake,

Tape H 2358 follows

September 11, 1973
8.45 - 8.50 p.m.
M.R.

(Mr. Deans)

~~Mr. Deans: And we won't ask you to tell us~~
~~anything about the Y and R system. It's an old plan for~~
~~Cad's sake. I don't say you think. Okay?~~

Because ~~we~~ I am prepared to accept it but obviously nobody else is.

Mr. Chairman: Mr. Deans, ^{has's up} ~~the limit date~~ ~~question~~
to Mr. Tamblyn. He's sworn to tell us the truth and if he—

Mr. Tamblyn: I'll be as positive as I am able to be but ...

Mr. Deans: You think this ~~statement~~ is fun?

Mr. Tamblyn: ...within the limitations set by the business that I am trying to tell the whole truth.

Mr. Deans: I understand. I thought ^{you} ~~we~~ were.

Mr. W. Newman: Mr. Chairman, following through on Mr. Deans' question, I'd like to ask Mr. Tamblyn: Did you design, yourself, personally, the Y and R system?

Mr. Tamblyn: Yes. I guess you'd say I did, because it really didn't get designed. It got to the point where we discussed what we would do and how we'd do it and what it would cost. ~~I~~ I did that, yes.

Mr. W. Newman: You're very much personally involved with that particular system?

Mr. Tamblyn: Now, should it have gone further than that, had they been successful and gone into a complete design, then I wouldn't have been responsible for some of what happened, most of what happened from then on.

Mr. Shibley: And were you the person who collaborated with respect to the design of the Canada Square system for the Hydro building right up to April of this year?

Mr. Tamblyn: I had some input and knowledge up to that point.

September 11, 1973
8.45 - 8.50 p.m.
M.R.

Mr. Shibley: Did Mr. Mitchell have any input up to that time?

Mr. Tamblin: No.)

~~_____~~
~~_____~~ Not that I know of. I don't think he did. But by the way, there was a partner by the name of Swiderski who ~~_____~~ hauled the big load on the job once matters were settled and the design was proceeding.

Mr. Chairman: Mr. Genest, I've accepted and I think most of the committee have accepted your caveat^e as to the expert, and Mr. Finlayson made that point earlier^e ~~and now~~ I think we've accepted the caveat^e ~~as to the~~ time and on that basis I think ...

Mr. Genest: I've nothing further to say, Mr. Chairman.

Mr. Chairman: Well, those are on the record. Now, I hope they are impressed on all of the minds of all of the committee members.

Mr. Shibley: Well, what I would like to know, Mr. Chairman is: Having been told by Mr. Mitchell that Mr. Tamblin was the person best qualified to give this evidence, not he, that his ~~own~~^{only} involvement was the two letters that were tabled as exhibits, do you really want me to call him as a witness? Because if so, I will, but I can tell you ...

Mr. R.G. Hodgson: To satisfy both counsels I think we should call both this other fellow and Mr. Mitchell.

Mr. Deans: Let's not decide, please. Let's not decide that until after we have heard Mr. Tamblin's evidence.

Mr. Chairman: Yes. Let Mr. Tamblin proceed, and then if the Canada Square counsel or the Hydro counsel have evidence that they want to bring out that is contrary to what Mr. Tamblin has said I think in all ~~the~~ fairness the committee will listen to ~~it~~.

~~_____~~
~~_____~~

September 11, 1973
8:45 - 8:50 p.m.
M.R.

Mr. Shibley: As a matter of fact, I would be very interested to know if there are any changes in the system as it was settled upon at April of this year when Mr. Tambllyn was still involved. Did you have any continuing involvement thereafter, Mr. Tambllyn?

Mr. Tambllyn: No.

Mr. Shibley: No. I'd like to know if there were any changes in the system as then settled to date, that might materially affect its quality or its ~~make~~ cost.

Mr. Chairman: You're not asking Mr. Tambllyn?

Mr. Shibley: No. I'm saying so that we can know, but for the present purposes, we'll take it that you are comparing the system that was proposed for the Y and R building with the system that you understood was to be incorporated in to the Hydro building by Canada Square as late as April of this year. Is that correct?

Mr. Tambllyn: I'm sure it's still an excellent quality system, just as it was on April 1st, but I'm not going to say I know much about it since that date.

Mr. Shibley: You don't know whether they made any changes since then?

Mr. Tambllyn: No.

Mr. Shibley: But in terms of ~~are~~ comparing the system as at April with the system of the Y and R proposal, you earlier testified that the systems were comparable in quality. Is that correct?

Mr. Tambllyn: In my opinion.

Mr. Shibley: Yes. And in terms of cost, it being a subjective thing on the part of Canada Square, their system incorporating their features would add perhaps 50 cents a square foot capital cost to that installation.

Mr. Tambllyn: Yes, that's my belief, yes.

Mr. Shibley: Is that correct?

Mr. Tambllyn: ~~No~~ ^{Yes}.

September 11, 1973
8.45 - 8.50 p.m.

M.R.

Mr. Shibley: That was the situation as recently as April of this year? Is that correct?

Mr. Tamblyn: ~~Yes~~ ~~inaudible~~ *Correct.*

Mr. Finlayson: I didn't hear your answer.

Mr. Tamblyn: I said ~~that~~ "correct?"

Mr. Shibley: And for that, according to the proposal of Canada Square, they are asking \$600,000 a year additional rent. ~~that~~

Mr. R.G. Hodgson: May I ask a question, Mr. Chairman?

Mr. Chairman: Yes. Mr. Glen Hodgson. Don't be controversial.

Mr. R.G. Hodgson: No, I'm not. Both of these systems were designed without sprinkler systems?

Mr. Tamblyn: Yes, that is correct.

Mr. R.G. Hodgson: And sprinkler system has entered into it since, I guess?

~~Mr. Shibley: Both systems incorporated a compartment~~

Sept. 11/73
8:50-8:55 pm
PLG

(Mr. ~~GP G. Nielson~~)

system ~~was centered into it since that then.~~

Mr. Shibley: Both systems incorporated a compartment system, did they not?

Mr. Tambllyn: The air handling is compartmentalized on each floor in ^{both} ~~this~~ systems, that's right.

Mr. Shibley: Yes. And the reason you concerned yourself about the lack of sprinklers as it applied to the Canada Square system is that -- is what? If you will explain to the committee, you have a certain depth of concrete ~~slab~~ ^{floor} and the Canada Square system requires penetration of the whole structure of that flooring.

Mr. Tambllyn: The reason that Tambllyn Mitchell and Partners ~~were~~ to look ~~xxxx~~ very seriously at floor-by-floor ~~xxxx~~ type systems was not so much because of the rentability of the fan room on the floor, but because of ~~that~~ the fact it was becoming alarmingly apparent from the New York fires that it was smoke spread by central fan systems that was killing people, the toxic contaminants in the smoke, ^{And} it was becoming apparent that our buildings were becoming more and more full of things ~~that~~ that would burn and create this smoke, the ~~plastic~~ plastic foam in the pillows and upholstery, the broadloom, the new wall finishes, the polyurethane ^{covers on the} cables and so on. So we noticed that authorities in New York ~~were~~ were starting to say, "Please, can't we possibly contain the air handling on a floor-by-floor basis?" and the National Research Council were also saying, "We have got to do something to contain this smoke, and here are some elaborate methods we have worked out, seven of them, which you could consider, as engineers!". They held a seminar to tell the world at large about this.

We went back thinking that perhaps we had a good rationale at this point for trying to find a simple way of providing a floor-by-floor system to contain the smoke, and we did develop one which has points of similarity with what Canada Square had done. One of the points of similarity it didn't have is that the air didn't go down through the next floor and come up again, because we felt that this business of ~~xxx~~ breaching the floor was something that would be ^{perhaps} ~~that~~ ^A

Sept. 11/73
8:50-8:55 pm
PLG

(Mr. Tambllyn)

better not done.

Mr. Shibley: Better not done.

Mr. Tambllyn: At the same time, both systems had the capability of not sending smoke to any other floor, other than the fact it went through a duct through the false ceiling of the floor below and came back up again. At least the fan would not be ~~working~~ working like a Mixmaster in the building, as central fan systems do, and we have mostly central fan systems in this town, where if smoke is generated on the 16th floor, the first thing you know it is on the 33rd floor and on ~~the~~ 10th floor and on the second floor, as it was at one New York Plaza which filled right up with smoke because of the fans continuing to run ~~in~~ there.

Mr. Deans: And no one could find the fire.

Mr. Tambllyn: I certainly don't want to make a big thrust about the point that the Canada Square system happens to go down and come up this way because that ~~also~~ also generates some advantages, as I said earlier. One of them was the fact that they ~~have~~ ^{save at least} three inches of the wall.

Mr. Shibley: And now with the full sprinkler there is not a problem of fire hazard. There is not the same problem.

Mr. Tambllyn: I say now that the building as sprinklered is so safe that it is ridiculous to talk about any hazard, of ~~any kind~~ ^{any kind}.

Mr. Shibley: But before it was sprinklered you ~~were~~ were concerned.

Mr. Tambllyn: It may have been a minor point.Mr. Chairman: Mr. Allan.

Mr. Allan: Mr. Chairman, before we leave that floor space, and I intended to ask, ~~this~~ —

Mr. Chairman: ~~You're~~ You're back to that three inches are you?Mr. Allan: Well I, -- you rudely interrupted me.Mr. Chairman: I apologize.Mr. Allan: Who benefits from the three inches most?

Mr. Tambllyn: Well, since it is not a question of rentability, it is a question of useability.

Sept. 11/73
8:50-8:55 pm
PLG

Mr. Allan: It's ^{not} ~~any more~~ rentable rentability.

Mr. Tamblyn: Hydro is the one that benefits.

Mr. Allan: They are the ones who benefit. ~~They~~ Yes.

Mr. Tamblyn: The developer gave them three inches more to use, and he didn't charge any more for it.

Mr. Allan: And the rentable space would be the same in both buildings.

Mr. Tamblyn: Yes.

Mr. Allan: They have measured to the window.

Mr. Tamblyn: Yes. Even if we have, ~~as~~ we did in the City Hall, a 30-inch enclosure sticking out into the room, or as we have in the Toronto Dominion Bank, a 29-inch enclosure sticking out in the room. You take the tape measure right past that and say you are running to the window.

Mr. Allan: I am trying to make Mr. Genest happy.

Mr. Genest: You are the only ray of sunshine tonight, Mr. Allan.

Mr. Chairman: That's what we get for working after sundown.

Mr. Shibley: Well, at \$600,000 a year additional rental, for ~~the~~ 5,000 additional square feet of useable space. I would be interested to know what that works out per square foot as added cost to Hydro for that extra three inches, that extra 5,000 square feet.

Mr. Tamblyn: I think if I were in this developer's position, I would point to the remarkable achievement that he has in the OISE building, the Transamerica, almost unheard of in other buildings, and then with the labour that goes into it....

Mr. Shibley: ^{You} ~~We~~ are talking quality.

Mr. Tamblyn: It's a great system, it's a quality system and you should pay more for it. I don't know that it could be ~~be~~ related ~~to~~ ^{to} ~~it~~.

Sep. 11/73
8.55 to 9.00 pm
fvk

(Mr. Tambllyn)

~~Heads of in other buildings.~~

~~Mr. Shibley: You're talking quality?~~

~~Mr. Tambllyn: This is a great system. It's a quality system and you should pay more for it. I don't know that it could~~
be related to saving 5,000 feet.

Mr. Shibley: Yes, we're talking quality.

Mr. Tambllyn: It could be as successfully related as it could be to the experienced regular system. It's been a good one.

Mr. Shibley: Exactly. Mr. Tambllyn, you've already said that the quality ~~was~~^{is} of excellent quality in the Canada Square installation, right?

Mr. Tambllyn: Yes.

Mr. Shibley: And the quality ^{that} ~~in~~ the Y&R proposal contemplated ^{is} of comparable measure, is that not so?

Mr. Tambllyn: Yes.

Mr. Shibley: It was also to be an excellent system.

Mr. Tambllyn: Canada Square have backed up a good system with good operation. That's another thing I might have mentioned because you have to have good detail and good operation to have a good system.

Mr. R.G. Hodgson: The Y&R proposal would not have sprinklers, or require sprinklers?

Mr. Tambllyn: The sprinklers were a decision of the Hydro. Mr. Candy had a meeting one day of people who were interested in whether there should be sprinklers, or not sprinklers. They involved fire marshals and everyone who was remotely involved and the recommendation of this committee was ~~a~~ that they should spend additional money, if necessary, to ~~has~~ have sprinklers in the building. This came as a much later event and I believe the sprinklers would have had more validity had it been a system that was a central fan-type system than the one that they have but, nevertheless, it was a decision that they wanted the building to be extremely safe, and it was worth the money.

Sep. 11/73
8.55 to 9.00 pm
fvk

Mr. Renwick: Perhaps, if I could put that question a different way, the decision of such a committee would have been the same regardless of whether it was the Y&R system or the Canada Square system?

Mr. Tamblyn: Yes, right, or ^acentral system or any other system probably.

Mr. Renwick: For other reasons?

Mr. Tamblyn: Yes. They made the decision for sprinklers even though ~~Q~~ they had a kind of an air-handling system which did not prop^aagate smoke throughout the rest of the building.

Mr. Shibley: Mr. Tamblyn, I take your evidence, therefore, to be that both these systems were going to be high quality, and very excellent? Is that right?

Mr. Tamblyn: Yes, I've said that. I would hope that with ~~what was the situation at the time~~ as good an operation as I've seen Mr. Moog's group do, and should they do I would expect the same kind of performance record. I've been needing Y&R ever since we found out how good it was going at OISE about trying to get their Parkway ~~Place~~ Place and other buildings down to ratios like that. I believe in the all-air end of Parkway Place, ~~They~~ they're doing pretty well. I haven't actually seen the figures lately but I think they come pretty close.

Mr. Renwick: Mr. Tamblyn, you refer to that as detail and operation rather than conceptual quality?

Mr. Tamblyn: And design. The conceptual quality has to be ~~that~~ there first but it's of no value if it isn't followed up with good detail^{ing} and good operation.

Mr. Renwick: I take it that we had a little semantic problem at the beginning there which everybody was a little irascible about but, as I take it, conceptually, you are saying that the two systems are, insofar as your judgement is concerned, capable of a similar performance given the detail and the operation to which you refer and the actual installation work involved in installing the system.

Sep. 11/73
8.55 to 9.00 pm
fvk

Mr. Tamblyn: Yes, I believe this to be the case and I'm quite sure there is going to be an ^{op}posing point of view brought on this that ^{the} two systems are not equal. But I believe they are, with considerable experience to back that up, and I'm going to prove, over the next several years, that the system which we proposed for Y&R and have proposed and adopted for some 8 million square feet of other buildings will work with excellent results.

Mr. Renwick: Perhaps, you and I, Mr. Tamblyn, can have this discussion and the irascible members and counsel can stay out of it.

Mr. Allan: Are you looking at me?

Mr. Renwick: No, not you, Mr. Allan, no. I take it that the concept which is the field, as I understand, in which Mr. Mitchell deferred to you and which is the field of your reputation, that the concept for the Y&R one is basically your concept over the years as the result of your involvement in this field, and that you believe that that concept, properly installed and with proper detail and with proper operation, will match any other system?

Mr. Tamblyn: Yes, that's correct. I heard it said earlier tonight that Mr. Moog felt this was robbed from his concept but, actually, —

~~Mr. Renwick: I don't want to get into that, the~~

~~will one.~~

(Tape H-2361 follows)

September 11, 1973
9.00 - 9.05 p.m.
M.R.

(Mr. Tambllyn)

~~and it was earlier tonight that Mr. Moog felt this was a robbery from his concept.~~

Mr. Renwick: I don't want to get in to that.

The Y and R

Mr. Tambllyn: ^{But} ~~To~~ make the point, there are major differences which they didn't like.

However, I say "yes" to your statement.

Mr. Renwick: ~~That is~~ that this is your concept which you, as all people who conceive anything, believe is a first-class one; and you are saying that if only people will install it properly and then follow up with the detail work of its maintenance and operation over the period of time, it will be top quality?

Mr. Tambllyn: Yes. And we, as engineers, are often responsible for following that up, ^{the installation} —

Mr. Renwick: Right.

Mr. Tambllyn: ~~and~~ and for seeing that it is well operated, and so we should take responsibility on a much larger scale. ~~and~~

Mr. Renwick: Now, so far as the Canada Square existing operation at OISE is concerned, you consider it to be top quality with respect to its concept, that its installation has obviously been good and that the detail and the operation has been such that you are urging others to do as well with your system. Is that correct?

Mr. Tambllyn: Yes.

Mr. Renwick: And then I take it, ~~that is~~ in trying to compare these concepts which, as I understand it were trying to do, that when you came into ~~it~~, and this is where I'd like to have your help ~~it~~ when you came into the Canada Square picture with respect to Hydro, it was after the conceptualizing of the system by Canada Square and that your firm was asked to perhaps make whatever adaptations were required and then to follow through with the detail work of ~~the system~~

September 11, 1973
9.00 - 9.05 p.m.
M.R.

~~(Mr. Renwick)~~

supervising the ~~xxxxxxxxxxxx~~ installation of it?

Mr. Tamblyn: Yes.

Mr. Renwick: Now, to what extent is the
was the concept of the OISE building or the concept of
Canada Square, in its proposal, your work?

Mr. Tamblyn: None at all.

Mr. Renwick: None at all?

Mr. Tamblyn: No. We were involved mainly with
the detailing of that and we made minor changes in - well,
minor changes in concepts, more major changes in detailing
and I think that we achieved, with the excellent operation of
the Canada Square staff, a better operation ^{at} OISE than
had been the case at 2200 Yonge, its predecessor.

Mr. Renwick: Apart from the friction which ~~we~~ has
developed as a result of these opposing concepts and the
question as to the high competition in the field, apart
from that friction which has developed, on a comparison of
the two systems as you have seen them in operation in the
OISE building, or have had experience with operation in the
OISE building, and experience with its operation in one of the
Y and R buildings, or more than one of the Y and R buildings,
the combination of concept, installation, detail and operation
of the OISE building, would in fact outperform the concept
installation, detail and operation of the ~~yx~~ system in one or
more of the Y and R buildings at the present time?

Mr. Tamblyn: I believe we are dealing with ~~lot~~as
of perfection. I feel that the installation for the Hydro
building will be an excellent system benefitting from matters
learned in Transamerica and OISE and 2200 Yonge on the one side,
and from the experience that our firm has had with many other
systems of an all-air design and even other designs.

~~the~~ The particular blend that is used looks good to
me. It isn't the one that I suggested or we discussed at some
time but we picked a few things from one and all of the other, put

September 11, 1973
9.00 - 9.05 p.m.
M.R.


(Mr. Tamblyn)

them together and we had a match which I think will probably have better characteristics in many ways than anything that Canada Square have done before.

Mr. Renwick: Can you now help me on this cost question? Can you equate this 50 cents per square foot as the additional capital cost of the one system with the add-in on the proposal of Canada Square of 50 cents per square foot.

Mr. Shibley: Fifty-five cents.

Mr. Renwick: ...fifty-five cents per square foot. I was choosing round figures, that the add-in of 55 cents per square foot on to the rent



H-2262 to follow

H -2362 - 1

(Mr. Renwick)

~~in 1960, however that the old in of 50 cents per square foot~~
onto the rent for a 30-year period, because that would mean to me
in simple mathematics, I suppose, that they will recover the
additional capital cost in one year and ^{have} a 29 year's free run at
something in excess of half a million dollars a year or \$15 or
\$16 million over the course of the -----

Mr. Shibley: I'll give you the figures, Mr. Renwick. *It is*
\$660,000 per year additional rental for an installation of
comparable quality which costs an additional \$650,000 once, and
allowing for the extra 5,000 square feet of usable space,
that would work out to \$132 per foot for that extra 5,000 square
feet on a foot basis.

Conversely, if you were to allow say, 10 dollars a
foot for that extra 5,000 feet, that's \$50,000, leaving a balance
of \$610,000 additional rent for what I am not sure. I am saying
for what I am not sure in terms of value.

Mr. Renwick: It seems that maybe you are not the proper
witness to even try to answer that.

Mr. Tamblyn: No, I don't think I am either.

Mr. Renwick: But I am curious about ~~the obvious un-~~
reasonableness -----

Mr. Tamblyn: I can do arithmetic, but I haven't heard
of this figure before. I didn't know anything about this till
tonight.

Mr. Renwick: ~~THESE FIGURES ARE NOT CORRECT~~ But it is
your considered judgment that conceptually to install the Canada
Square concept over the installation of what I could call your
concept, called the Y and R one, you are talking roughly in this
size building, you are talking to your best judgment about 50
cents a square foot?

Mr. Tamblyn: I believe that.

Mr. Renwick: Somewhere in that neighbourhood. Could
we as a committee in your judgment, subject to your involvement

H - 2362 - 2

(Mr. Renwick)

in these things, consider that's a pretty firm cost differential of somewhere between half a million and \$750,000?

Mr. Tamblyn: I think that's putting the brackets a little fine. As I pointed out before, I have a feeling that this lighting has gone up a little bit and there should be a special award for that, to either system by the way, and I am sure that the Canada Square people had to pull that out of their pocket if they went up in lighting in order to have a better lighting system, and then have more air conditioning to compensate for it.

I would say this is a problem that would happen with either system and that the differential is of the order of 50 cents in any case, and if you had to put upper and lower brackets on that I would ^{say} probably 25 and 75 cents would be reasonable.

Mr. Renwick: But that's roughly the scale that you would be speaking about as the difference between the systems?

Mr. Tamblyn: That's my feeling, yes.

Mr. Renwick: Could I ask you one further question, Mr. Tamblyn? I am not speaking now in technical terms about whether somebody would talk about patent infringement or otherwise, in the design of your system as a business matter, ^{is} an ethical business matter, which it would be, ~~do you~~ are you under any inhibiting factors in designing your system to the best of your ability? In other words, are you prevented because you ~~can't~~ don't have proper licences from anyone in ~~the~~ Canada to do what you want?

Mr. Tamblyn: No. *As a matter of fact*

Mr. Renwick: You are perfectly free to ^{con-}ceive and, if necessary, design the best possible system that you can work out?

Mr. Tamblyn: I know of no patent which would prohibit me from using the concept we recommended to Y and R, and subsequently recommended, to have a look at, to Canada Square. I dare say that if they felt that they had patents which would conflict with that, that they would have said something to me, but they didn't.

Sept. 11, 1973
9.05-9.10 p.m.
M.F.

H - 2362 - 3

Mr. Renwick: Well I wasn't thinking about it in comparison, but in the design of your system you didn't have to say "Oh, if we'd only had a licence on this patent, we could do this even better"?

Mr. Tamblyn: No.

Mr. Renwick: It's the best system that you could devise in a free world of ideas as to how you do it.

Mr. Tamblyn: That's right. It is a generation above the one that you saw at Parkway Place at the IBM end of it.

Stt → ~~Mr. Renwick: Thank you, Mr. Tamblyn.~~

~~Mr. Tamblyn: I would like to say that to you.~~

Tape H - 2363 follows

Sept. 11/73
9:10 - 9:15 pm
JLP

((Mr. Tambllyn))

~~Place at the end of it.~~

~~Mr. Renwick: Thank you, Mr. Chairman.~~

Mr. Chairman: Mr. Genest, ^{do} you know what we are getting at on that Exhibit 61, page 4, the 55 cents; you follow that do you?

Mr. Genest: Yes^s, but you see what bothers me, Mr. Chairman, is the impression that this ~~an~~ exchange ~~a~~ is left sort of hanging there, that there's sort of \$650,000 worth of money a year to Canada Square that is just fat, that is profit.

Mr. Shibley: That's the charge here. Isn't that what they said they were charging in their rental rate as additional?

Mr. Genest: You see, that's just a figure in the air. What we're dealing with is, what we're going to pay for rent, and what the building is going to cost. And I think at least —

Mr. Deans: I don't know —

Mr. Genest: Well, just a minute, we have Mr. Rasmussen's evidence.

Mr. Renwick: No, but Mr. Chairman, this is going to be nothing but argumentative. I simply highlighted it from the point of view not, because I've accepted it or anything else, but that it didn't seem to me to be a reasonable comparison. I wanted to make certain that when Hydro witnesses or other witnesses come up, that we get an ~~exact~~ explanation, ~~on~~ not of the comparison but of ~~what~~ what appears on the face of it to require explanation, that's all.

Mr. Chairman: That's why I was drawing it to Mr. Genest's attention.

Mr. Genest: I wonder then, Mr. Chairman, if we could have ~~the Hanscomb Roy~~ the last Hanscomb Roy report put to this witness, and see where there's conflict between the opinion of Mr. Rasmussen, who is an experienced quantity surveyor, who, on the evidence, has attempted to resist the blandishments of Mr. Moog to up his price, and it seems to me plain, ~~that~~ has arrived at an independent view of what this is worth.

Sept. 11/73
9:10 - 9:45 pm
JLP

Mr. Chairman: These systems aren't in that report yet are they?

Mr. Genest: He's got a figure in for —

Mr. Shibley: An allowance.

Mr. Genest:—Of ~~\$5.62~~ \$5.62; he estimates that that's what it's going to cost for heating, ventilation and air-conditioning, plus 80 cents for plumbing. And I'd like to see if there's a conflict between Mr. Camblyn and Mr. Rasmussen in that regard. Because I think the way this has been put ~~leads~~ leads to conclusions that just aren't there in the end, because surely in the end what matters is what's going in, what's the worth of what's ~~going~~ ^{going} into the building.

Mr. Chairman: I think it has to do with the proposal again.

Mr. Genest: Well, it may be wanted for that limited purpose but I ~~can~~ think you could very easily be led to another conclusion, and that is that Mr. Moog is putting 650 grand in his pocket, that he ought not to be.

Mr. Shibley: I think the question is really, is this good value for the money being spent? And I thought we were fairly making a comparison first. I tried to establish through the witness, who seemed familiar with both buildings, what was the quality of the two systems, and he has said, from detailed understanding, that they are of comparable quality, both excellent.

Then we come to deal with the question of cost, and he has said that the Moog system, because of subjective items, that he thinks should be included, even though this witness doesn't seem to think it adds anything to the quality. ~~but~~ nevertheless, Mr. Moog feels it does and he's putting them in, and he says those extra items cost an extra 50 cents a foot. So, in terms of the two submissions, we are talking of a differential of ~~xxx~~ capital cost of \$650,000. Now, in Mr. Moog's proposal, he said that he was claiming an extra rental, and correct me if I'm misreading this, but I understand it, at 55 cents times 1,200,000 square feet of rentable space comes to \$660,000 per year additional rental because

(Mr. Shibley)

of the special system that he's installing in this building. Am I missing something?

Mr. Chairman: That's in his proposal. Now, I think the point that Mr. Genest is making, ^{is} that when you come to assess these in the end, that would be possibly lost.

Mr. Deans: No, Mr. Chairman, that isn't surely the point he's making. What Mr. Genest is comparing is the cost of installation of the Canada Square system. He is saying that Mr. Rasmussen is capable, and he obviously is, of assessing whether Hydro got \$5.50 worth of value installed in the building. I wanted, Mr. Genest,

Mr. Genest: You're quite right, Mr. Deans.

MR. Deans: And I'm correct, right?

Mr. Genest: You're quite right, Mr. Deans.

Mr. Deans: Now please let me finish. What you are saying is that, and I agree with you that Mr. Rasmussen probably is capable of making that assessment. And I suspect that Mr. Tamblyn will agree that Mr. Rasmussen probably can assess whether there is \$5.50 worth of value per square foot in the building on the product that is installed at the time of installation.

(Tape H-2364 follows)

September 11, 1973
9.15 - 9.20 p.m.
M.R.

(Mr. Deans)

~~with a valid license to use the building for the product~~
~~that is included at the time of installation.~~ What Mr. Shibley is saying is that in addition to that, Mr. Moog has then charged Hydro on a yearly basis for the duration of the contract. That's what Mr. Shibley is saying; that Mr. Moog has now charged Hydro not only the ~~installation~~ ^{45.50} installation cost, which we are not going to quarrel with for a ~~moment~~ moment, but he ~~is~~ has in addition to that, made an allowance of 55 cents per square foot for 1.3 million square feet for 30 years.

Mr. Genest: You see —

Mr. Deans: So that — please bear with me — so that Mr. Rasmussen is not in a position to make any judgment on that because Mr. Rasmussen is not in a position to judge the value of the contract that Hydro has signed by way of a rental agreement. That's what we are at ~~at~~ at the moment.

Mr. Genest: No. That's the trap; I think that you have ~~fallen into~~ ^{fallen into} in these figures.

Mr. Deans: No. We are not falling into it. ~~Mr~~

~~Mr. Deans~~ I quite clearly understand what is being said.

Mr. Genest: Yes, well, ~~in my~~ in my submission, Mr. Deans, you don't. You've reached ^{that} conclusion.

Mr. Deans: No. ~~I~~ haven't ...

Mr. Genest: — That I fear ~~my~~

Mr. Deans: I'm sure you fear it. I ...

Mr. Genest: ^{Listen to} ~~my point.~~ my point.

Mr. Deans: If you didn't fear it, I would think you weren't doing your job.

Mr. Genest: ^{Let me quote} ~~some figures:-~~ some figures:-

\$4.92 is what ~~Hydro~~ Hydro is paying. \$4.92 a year.

And the way to find out if Mr. Moog is putting \$650,000 in his pocket for an airconditioning system is to break down those figures.

Mr. Deans: I agree. ~~I~~ I understand that.

September 11, 1973

9.15 - 9.20 p.m.

M.R.

Mr. Genest: If he puts up a building on which an appraised cost or what Mr. Rasmussen is trying to do is ~~estimate the cost of putting that up~~ and if it costs him \$34 a square foot, including interim financing, and architects' fees, then Mr. Moog is only putting in the difference in his pocket, he's putting in the difference between \$4.92, what his financing charges are, which are \$3.24, ~~what his maintenance~~ ~~charges~~ will cost him, which is \$1.45, and he's putting in, ~~about~~ just on these figures, about 23 cents a square foot, not the kind of money you are talking about. And that's where you have fallen into a trap.

Mr. Deans: But we haven't fallen into any trap yet. I respectfully suggest to you that you have fallen into the trap. We haven't done anything yet. All we have said is that on the ^{face} of the document there is 55 cents allotted per square foot per year for having the system there.

Mr. Shibley: For extra.

Mr. Deans: But on the face of the document there is 55 cents.

Mr. Finlayson: That's not extra. That's the portion that they will not absorb.

Mr. Shibley: No, I mean, he says this is because his is an extra costly system. ~~As he is saying~~ ^{this is} because of the special features additional to what normally would be in. In other words, if they had put in a normal airconditioning system as opposed to this unique one, the rental would have been 55 cents per square foot less. And that's ~~the~~ part of the proposal. So this isn't the whole of the allowance for the airconditioning. This is only part of it. This is the extra charge for the special features of this system - 55 cents, according to the proposal.

Mr. Finlayson: No. No. It's actually the portion which the contractor is telling Hydro that they are going to have to bear for the extra system. It isn't saying that's the only additional cost.

September 11, 1973

9.15 - 9.20 p.m.

M.R.

Well, it's headed,Mr. Shibley: Additional cost per square foot

per annum."

Mr. Finlayson: To Hydro.Mr. Shibley: I know.

Mr. Finlayson: That doesn't mean that Canada Square isn't absorbing additional costs over that 55 cents. Remember that.

Mr. ~~Deans~~ Deans: No, but let me just, if I may,

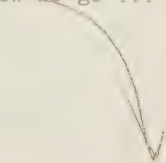
Mr. Shibley, it seems to me that Mr. Tambllyn here is quite capable of telling us about the installation value. And he should be able to tell us whether it is - maybe he should be able to tell us whether the ^{\$5.50} ~~figure~~ figure is right; I don't know if he can or not ...

Mr. Genest: It's \$5.62.

Mr. Deans: \$5.62, okay. But I think, Mr. Shibley, if I may, that perhaps Mr. Tambllyn isn't the proper person to assess whether or not Canada Square should be charging 55 cents additional. If he can tell us what it cost to install it ...

Mr. Shibley: I didn't ask him that.Mr. Deans: Of course you didn't.

Mr. Shibley: ~~Mr.~~ Canada Square is the party that's submitted a proposal wherein Canada Square itself said it was charging an extra 55 cents per square foot besides of the feature "VVR system installed." Now all I'm asking of the witness -- I'm trying to find out frankly whether Hydro is getting value for this extra 55 cents per square foot. And we start off and we compare the two systems. The witness has said they are comparable. They are both to be excellent. Now we go ...



H-2365 to follow

Sep. 11/73
9.20 to 9.25 pm
fvk

(Mr. Shibley)

Now, we go from there and say —

Mr. Renwick: Subject just to ^{this — and this is} the last addendum.

Subject to the fact that in the actual working out of the systems, when you go from the concept to the installation, to the details, to the operation, the fact of the matter is that the OISE system ^{and} is performing better than the Y&R system.

Mr. Shibley: Mr. Renwick, you're comparing the wrong things. We should be comparing ^{and} with great respect, I think we've got much more precise comparison to make than that. We are comparing the system that was proposed by Y&R which ^{and} Mr. Tamblyn, would that be an improvement, or sophistication of, or an ~~improvement~~ advancement on anything that Y&R had done up to that point of time?

Mr. Tamblyn: Yes.

Mr. Renwick: All right. ~~That's~~ That's Mr. Tamblyn's system.

Mr. Shibley: Okay, let's take one step at a time.

Is that right?

Mr. Tamblyn: ^{best} Yes, we feel this is a very major point. We found the experienced report in downtown Toronto was about 10 complaints per day per million ~~square~~ square feet and the OISE building has been going along nicely between one and two complaints per day per million square feet.

Mr. Shibley: What I want to know about —

Mr. Tamblyn: The Y&R system, the IBM and the all-air type system, has run for three and four weeks without a single complaint. I believe that its record is down in around two complaints per million square feet. It's a very, ^{are} very close record. All these other buildings in downtown Toronto are ^{running between 2 and 4 complaints per million square feet} ~~running between 2 and 4 complaints per million square feet~~ So ^{are} this kind of system we're talking about ^{are} is very, very close, I think, from the experience record.

Mr. Shibley: That's the point. Let's not talk about

Sep. 11/73
9.20 to 9.25 pm
fvk

(Mr. Shibley)

OISE or any other building. You're familiar with the actual installation as of April that was going into this building for Hydro and you're familiar with the ~~the~~

Mr. Renwick: Mr. Chairman, with great respect, Mr. Shibley, there is very little actual installation in the Hydro building now. We're talking conceptually.

Mr. Shibley: May I ask you, Mr. Tamblin, to comment on that. As of April, in terms of the type of system ~~the~~

Mr. W. Hodgson: ~~W~~ This is October we're into now, you know.

Mr. Shibley: ~~in~~ in terms of the system that was being settled upon for Canada Square, can you comment ~~on~~ ^{what} variations from that you might anticipate from everything you know that might materially affect its cost or quality?

Mr. Tamblin: There could be, for instance, in the design of the air ~~duct~~ ^{system}, some little detail which would ~~add~~ ^{add} two cents a square foot, I suppose. There could be ^a decision to go to a more elaborate ~~central~~ centralized control panel. I wouldn't be at all surprised, if I were in the developer's shoes, that I would look at centralized control with the idea of minimizing manpower and, it may be, that by spending another \$150,000 in this area that you could probably save a quarter of a man ~~over the life of the building~~, or a part time man sometime. So I wouldn't be at all surprised if ~~that~~ ^{the} system became more expensive in some details where there was a rationale for it and ~~where there~~ ^{where there} ~~where there~~ it would be a payoff in the longrun.

Mr. Shibley: You're talking about the remote control system?

Mr. Tamblin: Yes, I'm saying that ^{as} if you detail a system you sometimes decide to spend a little more money here and sometimes you find a little way of saving some money over there.

Mr. Chairman: Mr. Allan.

Mr. Allan: Mr. Chairman, I wonder if we might make greater progress finally if this whole matter was left until we

(Mr. Allan)

look at the figures that make up the rent, rather than doing it on proposals. We're talking about proposals, and as of my recollection, ~~on~~ proposals and what finally happens, can be very different. Certainly some of the proposals that were made by Canada Square never came into the final agreement at all. And it seems to me that, ^{surely,} sometime, we're going to analyse this whole ~~this~~ thing and endeavour to determine whether the rent is proper, or improper, having regard for the cost of the building, or however we appraise it. I think, by spending all this time on a proposal I'm afraid we're wasting time at this particular stage.

As a follow up,
Mr. W. Hodgson: ^A Mr. Chairman, maybe Mr. Shibley would like to ask Mr. Tamblin what he knows about the system ^{that is} ~~that is~~ proposed and ~~was~~ going in as of September 11, not of April 1?

Mr. R.G. Hodgson: There's a difference here, Mr. Chairman; there's a difference here. We have Hydro who made a decision on two proposals. This is what we're considering; whether Hydro made a good deal or not,

(Tape H-2366 follows)

Sept. 11/73
9:25-9:30 pm
PLG

(Mr. R.G. Hodgson)

~~Hydro who made a decision on two proposals, and this is what we~~
~~are considering, whether Hydro made a good deal or not,~~ and the only thing before Hydro at that time was two proposals, and we are assessing the two proposals. I think it is very, very relevant and very, very important.

Mr. Allan: Yes, but the final agreement is the one that ~~is~~

~~was~~ going to determine whether it was a good deal or not.

Mr. W. Hodgson: There were many changes after October first.

Mr. Allan: Certainly.

Mr. Gaunt: But Mr. Chairman, just on Mr. Hodgson's point, the fact of the matter was that Hydro made the decision based on the proposals which they had, and ~~with~~ with respect, I think that is why counsel is trying to determine whether in fact Hydro made a good judgment.

Mr. Chairman: That is the point that I was trying to make earlier. I notice ~~the~~ ^{the} difference in time of the proposal ~~and~~ and the actual end result, ^{the} and caveat on the expert and ^{the} caveat on time, and with those two things in mind I thought we could get along. But we have had many objections thrown up to ~~this on~~ this on the basis that this was being represented as the final picture. Now, I realize it wasn't being representative.

Mr. Renwick: Mr. Chairman, I haven't come to any conclusion about it, haven't fallen into any trap, and I am grateful for all the warnings we have had about whether there is a ~~is~~ trap or not. All I am saying is I don't think Mr. Tamblyn ~~is~~ can add any evidence to that aspect of the question. I think that Hydro is alerted to the fact and Canada Square is alerted to the fact that they are going to have to come up with an explanation of the answer to us, but...

Mr. Shibley: Exactly.

Mr. Renwick: ..there are other aspects that I think we should deal with ~~Mr.~~ ^{Mr.} Tamblyn...

Mr. Shibley: I agree. I just wanted to get his evidence *ao*

Sept. 11/73
9:25-9:30 pm
PLG

(Mr. Shibley)

to the comparative qualities of the two systems that were proposed. The Proposal of Y and R and the installation that was planned as of April of this year for the Canada Square construction of the Hydro building, ~~we~~^{we} have got that evidence. At the moment I am accepting the submission of Canada Square as indicating the extra charge in rental rates per annum which Canada Square said it was including in its overall rental because of the unique features of its system, when in fact it doesn't seem that in terms...

Mr. Finlayson: Just a minute, Mr. Shibley. You are not suggesting that Canada Square on January 24, 1972, ~~was~~^{was} saying that their system was 55 cents better than Y and R? We didn't even know Y and R was bidding at that time. I remember that.

Mr. Shibley: Well, I read this, and I would be glad for clarification, because I read this as meaning that because of the unique features, unique features of the Canada Square installation, features that made it of a quality higher than that of any other of the competing developers...

Mr. Finlayson: No, it didn't say "competing developers." We didn't know who our competition was.

Mr. Shibley: All right. Forgetting that...

Mr. Finlayson: Well, I have got a point.

Mr. Shibley: ~~we~~^{All} right. Because of the unique features of this installation, that there was an additional rental charge of 55 cents per square foot per annum, to be applied not against 1.3 million square feet, Mr. Deans, but against 1.2 million of the rentable square feet, meaning therefore that Hydro is being charged a rental of \$660,000 per year for what they say is unique under their system, and this witness has said that it is not different from the -- I am sorry it is not...there is no...

Mr. ~~Finlayson~~ Finlayson: There has been no difference between it and Y and R.

Mr. Shibley: Yes. No difference in quality.

Mr. Finlayson: But this proposal doesn't suggest that it is worth 55 cents more than Y and R's proposal. We didn't even know that

Sept. 11/73
9:25-9:30 pm
PLG

(Mr. Finlayson)

Y and R had ~~late~~ bid at that time.

Mr. ~~Deans~~ Deans: Yes. This is where I was looking for a recess to find out.

Mr. Chairman: Does it not suggest that it is worth 55 cents more than the average, whatever the average is. Let me read from it. I am looking at Page 3 of Exhibit # 61:

"In order to offer you these features, without sacrificing the quality of the building, we ^{are} ~~are~~ obliged to charge a slightly higher rental than would be applicable to a less intricate design."

Now, we don't know what a less intricate design is.

Mr. Finlayson: But it isn't Y and R's because we didn't even ~~we~~ know they were bidding.

Mr. ~~Chairman~~ Chairman: "We must ~~pass~~ ^{pass} some of these additional costs on to you in our rental rate, as we are unable to ~~absorb~~ ^{absorb} all of these expenses ourselves. However, in order to permit you to assess our proposal, we are setting out below the cost estimates which our architects and engineers have provided for these special features, which have been calculated on the basis of additional annual rental per square foot of space. ~~Re: 11/73~~

Tape H 2367 follows

H - 2367 - 1

(Mr. Chairman)

~~for the special features which have been calculated on the basis of additional annual rental per square foot of~~
Feature; VVR mechanical system, additional cost per square foot per annum, 55 cents."

Now I agree, we don't know whether they are comparing it with Y and R or any other proposal, but it says "applicable to a less intricate design".

Mr. Genest: Mr. Chairman, there is evidence, as you will recall, that there was an offer by Mr. Moog at some stage, I have forgotten when it ~~was~~^{was}, to build a building at \$3.99 a square foot, ~~and~~ I think this is the fallacy we are falling into, that Mr. Shibley is adding the 55 cents ~~to~~---

Mr. Shibley: Well let me ~~say~~---

Mr. Genest: May I finish, sir? Is adding the 55 cents to the Y and R proposal, whereas Mr. Moog is adding it to a \$3.99 building, which may be a bunch of fans and ice cubes.

Mr. Chairman: You mean that it might be done the way this building is?

Mr. Genest: You could find 55 cents very easily. But that's the comparison and that's where I think we are falling into a trap. We are adding this to Y and R and it's really not being added to Y and R.

Mr. Shibley: Okay.

Mr. Chairman: Can you assure me, Mr. Genest, that Hydro didn't fall into this trap when they accepted the proposal?

Mr. Genest: No, no, but you can't take this and add it to Y and R's costs.

Mr. Chairman: All right, but what did they mean then? What were they adding it to? Does the proposal mean anything?

Mr. Genest: I presume they were adding it to their other building that they discussed with Mr. Candy, "We can build you a \$3.99 per square foot building."

H - 2367 - 3

Mr. R. G. Hodgson: The difference between the two systems that you had been involved with Canada Square in their decision between the two was somewhere in the neighbourhood of about 23 cents difference in the price ^{ing} in your opinion?

Mr. Tambllyn: I said there was 50 cents difference in the first cost.

Mr. Shibley: You see - if I may alert the committee to this - in exhibit 67, it sets out the comparative rates of rent as originally submitted. Y and R submitted a rental rate of \$4.50 and Canada Square submitted a rental rate of \$4.92, for a rental differential of 42 cents.

Now what ~~Y and R~~ ^{Canada Square} said, in effect, is we are going to build you a better quality building and that's why our rental rate is 42 cents higher and they went through a pro-rating process in Hydro, etc. A very major element of what Canada Square contended is adding to the quality is the air conditioning system. Really that's the major item of all of the items in terms of dollar cost, capital cost. So that the same 55 cents that they put in their submission ultimately does get translated into the rental rate, where there was a base difference on the original submissions of ~~42~~ ⁴² cents per square foot in the rental rate. Now one of the justifications advanced by Canada Square is we are putting in a special type air conditioning system, etc., better quality. This witness has said the quality of the two systems is comparable.

~~Mr. Allan: Mr. Chairman, with all due respect, I don't~~
~~know that's correct.~~

Tape H - 2368 follows

Sept. 11, 1973
9:35 - 9:36 p.m.
JLP

H-2368-1

Mr. Allan: With very great respect, I don't think that it ^{was} ever said that that 92 cents was added to any rental. I can't see that.

Mr. Deans: In order to amortize the building, ~~it was~~ you have to add it to the rental.

Mr. Allan: No, it became a part of the cost of building a building for \$34 per square foot.

Mr. Deans: Right. But, Mr. Allan, it must be added to the rental because you have to amortize the total cost of the building.

Mr. Allan: But it wasn't added to anybody else's rental. That's what I'm trying to say.

Mr. Chairman: ~~Gentlemen~~ Gentlemen, we've got about three attempting conversations going on. Mr. Finlayson is ~~attempting~~ to explain something.

Mr. W. Newman: Why don't we take a five-minute break?

Mr. Chairman: I think that might be a good idea. I want to finish with MR. Tamblyn tonight, but it seems to be there are quite a few things to clear up. ~~I don't think~~ I don't think we're going to get to Mr. Coles at quarter to ten, but we'll break until quarter to ten; let's try to get back here then and maybe if there are some points you want to clear up amongst yourselves you can take the next couple of minutes to do it.

The committee recessed briefly at 9:36 o'clock, p.m.

(Tape H-2369 follows)

September 11, 1973
9.50 - 9.55 p.m.
M.R.

Mr. Chairman: I call the meeting back to order.

I question in my mind whether we can gain much more by pursuing this particular facet this evening. I would hope that we might complete Mr. Tamblyn's evidence before too long. If there is an essential point that you wish to make with Mr. Tamblyn on that, I would ask you let Mr. Shibley ~~attempt~~^{try} to do so without interruption on it, and argue his accuracy or correctness of procedure tomorrow. I certainly am on warning and I'm sure all the members of the committee have been thoroughly warned to examine this piece of evidence very thoroughly, but I would like to proceed with the rest of Mr. Tamblyn's evidence so we can complete it now.

Mr. Shibley: Mr. Tamblyn, are you able to provide any costing of the system that was proposed for the Y and R building and the costing for the system that was decided upon for the Canada Square installation as at April?

Mr. Tamblyn: No, I can't provide any information about the costing on Canada Square as of April.

Mr. Shibley: I see.

Mr. Tamblyn: The final cost of a system has quite a bit to deal—you deal with conceptual differences and talk about differences in concept and what they cost, and then finally you get down into hardware, where you may decide to put in stainless steel for some reason or other, ^{at} three times ~~the~~ cost because it lasts 10 times as long. ~~or~~ You deal with little trade-offs like that, and the only way to know what ^{the} final cost of a system is to tender it and see.

Mr. Shibley: Actually get the contract prices in from the trades?

Mr. Tamblyn: Yes.

Mr. Shibley: So if we are not provided with those contract prices, we'll never know?

Mr. Tamblyn: Well, that's one way to find out. Perhaps this is something that is within your right to ask. I don't know. But I say I think it's fairly obvious that this is one way

September 11, 1973
9.50 - 9.55 p.m.
M.R.

(Mr. Tamblyn)

you are going to find what actual costs are, ~~and~~ ^I it may be the developer would be anxious to tell you this. I don't know what his feelings on this are.

Mr. Chairman: When you say ...

Mr. Tamblyn: I mean, it puts an end to hypothecating about trade ~~data~~ indexes and cost indexes and changes ~~for~~ ^{for} less than that, but I don't know whether it's germane to the discussion what ~~the~~ the exact cost is. I don't know what it is, right now, and eventually I suppose the information will be there when the thing is tendered, or possibly the developer if he wanted to tell you could tell you. Perhaps he's got a good idea what it is.

Mr. Shibley: Unfortunately Hydro has no contractual right to that information. They didn't get it as part of their contract, and as I understand Mr. Moog, they are not prepared to provide the figures voluntarily, so that's why we have to come at it in this way, Mr. Tamblyn.

You can't give us any estimate as to costs?

Mr. Tamblyn: I heard one mentioned. Rasmussen and I have been very close when we have jointly estimated systems. Quite often a developer has not felt a great deal of confidence in what we have said, although we have developed quite, I had thought, an expertise in costing. And so we found ourselves getting double-checked from people like Hanscomb Roy, who I think are very good in their line, ^(we) we have generally been very close.

Mr. Shibley: Now, as Mr. Genest said, I think they have come up with a cost for this system of something like \$0.50 a square foot, I believe, in the overall, including plumbing and airconditioning, and would that accord with your expectations?

Mr. Finlayson: Well, now, Mr. Chairman, there's a letter from Tamblyn. It's 7.5¹⁰ and I don't think that's proper.

September 11, 1973
9.50 - 9.55 p.m.
M.R.

Mr. Tamblyn: Well, I haven't been following the ins and outs of all this but I heard a figure of \$5.50 as Hans Rasmussen's figure. Is that right?

Mr. Genest: \$5.62 for heating, ventilation and airconditioning and 80 cents for plumbing and drainage.

Mr. Tamblyn: I see.

Mr. Genest: \$6.42 plus some contingencies.

Mr. Chairman: That's not a figure you've calculated yourself, so I gather?

Mr. Tamblyn: How did Mr. Rasmussen arrive at this figure?

Mr. Finlayson: Well, Mr. Chairman, ...

Mr. Tamblyn: Did he have your plans or did he have some other plans?

Mr. Finlayson: This is getting a little general. ~~troublesome~~ I suggest the witness should answer the question.

Mr. Chairman: I'm not so certain that Mr. Tamblyn doesn't know how this figure is arrived at, but it's going to be very much value to us.

Mr. Shibley: Are you familiar with the actual costs of comparable systems in buildings recently under construction?

Mr. Tamblyn: Yes. I'd have to say, in general, yes.

Mr. Shibley: Can you single out a building?

Mr. Tamblyn: The cost of the mechanical for the third tower of the Toronto-Dominion Bank, I believe, was less than \$6.00.

~~Mr. Shibley: Yes.~~

~~Mr. Tamblyn: I believe it was probably in the order~~

(Mr. Tamblyn)

~~I believe it was probably in~~ I believe it was probably in the order of \$5.00 or so.

Mr. Shibley: For the third tower of the TD Centre.

Mr. Genest: What year was that?

Mr. Shibley: It's still under construction.

~~Mr. Genest: Can you see it down there, going~~ *Mr. Tamblyn: You can see it down there, going*

~~Mr. Genest: On the T-D?~~

Mr. Shibley: Yes, that's the ~~new~~ tower that's presently under construction?

Mr. Tamblyn: I think it was just under \$5.00.

Mr. Chairman: *Originally* ~~originally~~ you said it cost a little less than \$6.00, and then you said in the order of \$5.00 or so. Now you are saying under \$5.00 - is that right?

Mr. Tamblyn: Yes, I'm sorry, *If* I realized this question was going to come at me I would have taken the trouble to find the *quoted* exact cost and I'm sorry I don't remember it, so I don't want to say it's this or it's that. I recall it being in the order of \$5.00, certainly under \$6.00.

Mr. Genest: Is this hearsay? I think it's important to establish whether Mr. Tamblyn has done a study of this or whether he's just quoting what somebody else has told him.

Mr. Shibley: Mr. Tamblyn, did your firm do a —

Mr. Tamblyn: According to what the contractor who is doing the job told me, *he'd quoted*.

Mr. Shibley: The contractor who is actually doing the installation?

Mr. Tamblyn: Yes.

Mr. Shibley: That bid on it and got the contract - is that right?

Mr. Tamblyn: That's right.

Mr. Genest: What kind of system is it?

Mr. Tamblyn: It's the kind of system that should be a little bit less expensive. It's one of the air-water systems which I said I would consider not as good a system.

Mr. Genest: Mr. Chairman, I don't like to keep interrupting, but is this useful? Is this line of evidence useful, with great respect?

Mr. Chairman: I'm concerned that Mr. Tamblyn didn't do this himself, ^{and that} ~~but~~ we now have a figure that only somebody else has told him and we don't know a comparative of the ^{what's} in the mechanical of one as compared to the mechanical of the other.

Mr. Shibley: I was just going to ask the witness, Mr. ~~Chairman~~ Chairman, How do you compare the system in the 3rd tower of the Toronto-Dominion Centre that's under construction now with the system that Canada Square was contemplating as at April this year?

Mr. Tamblyn: Not as good.

Mr. Shibley: Not as good?

Mr. Tamblyn: No.

Mr. Shibley: And how much differential in cost would you expect ~~you~~ to make the improvements that are in the Canada Square system?

Mr. Genest: Mr. Chairman, I object to this evidence. I'll say nothing more, I object to this evidence.

Mr. Shibley: Well, I'd like the question answered. *Would you go on Mr.*
Mr. Tamblyn: I'd say there would be ____

Mr. Genest: Can I have a ruling from the chair?

Mr. Chairman: Well, Mr. Genest, I know you have objected to it.

Mr. Genest: It doesn't take a minute to say my objection is overruled, Mr. Chairman. I just want to register my objection. I think I owe it to my client.

Mr. Chairman: Your objection is certainly registered. As I say, our rules of evidence are not the same as a court rule of evidence.

Mr. Genest: I appreciate all that. I just don't want Mr. Shibley to overrule my objection, I'd like you to do it as the chairman of this committee.

Mr. Chairman: Yes, I'm overruling it at the present time. I want to hear the evidence of Mr. Tamblyn,

Mr. Genest: I accept your ruling, Sir.

Mr. Chairman: I want to get on with this. Then when the evidence is in, you may very well have some more caveats to put on record. I think the committee has the ability to cipher out what is fair and what isn't fair.

Mr. Genest: ~~With the press concerned~~ ^{with the press concerned} maybe not.

Mr. Chairman: Well, I realize that, they may not, ~~not~~ and I ask the press to be cautious with what the evidence that's presently coming before you. I don't know how the press can write a story on the figures that have been presented here tonight in any event.

Mr. Deans: Oh, I ~~think~~ ^{think} they'll be able to write a story, ^{all right, it depends} ~~but it depends~~ what kind of a story it is.

Mr. Tambllyn: The Bell Telephone, according to people I ^{in their group} have talked to ~~who~~ are installing the mechanical system ~~and~~ in their proposed new headquarters building, which hasn't started yet, on University Avenue, at about \$5.00.

Mr. Shibley: And what kind of a system is that going to be?

Mr. Tambllyn: It is an air-water type system and it would be about 50 cents cheaper than most of the all-air type designs, about comparable with the one that we propose for Y and R.

Mr. Shibley: How would it compare in terms of quality and cost with the Canada Square installation for Hydro?

Mr. Tambllyn: I have already stated that the quality of the air-water systems is not as good; their complaint record is not as good. I mean I accept it as being ~~as~~ good in downtown Toronto; probably one complaint a day in 100,000 feet is not anything to get terribly concerned about, but the ~~all-air~~ systems are, in fact, even better than that, as I've said.

Mr. Shibley: And is that the 50-cent differential ~~per~~ again that we're talking about? Is that correct? In capital cost?

Mr. Tambllyn: Yes.

Mr. Shibley: Is that a building yet under construction?

Mr. Tambllyn: The Bell Telephone building is not under construction yet.

H-2370-4

Sept. 11/83
9:55 - 10:00 pm
JLP

Mr. Shibley: That's projected cost of the installation
in that building?

(Tape H-2371 follows)

(Mr. Tambllyn)

~~Mr. Shibley: This is a tender for the installation~~

~~of the building. This is a project for the installation~~
~~of the building.~~

Mr. Tambllyn: Yes. They have had a few tenders and they *have*
~~are~~ looking at some figures.

Mr. Shibley: And the figure for ~~that~~ that building is \$5.00?

Mr. Tambllyn: It is of that order, yes. That general order.

Mr. Shibley: And then there is the federal complex in Ottawa
that your firm worked on in regards to the ~~figure~~ figures and ~~...~~

Mr. Tambllyn: That job was tendered at something like
\$5.75 per square foot, including the usual dollar ~~for~~ 80 cents for
plumbing and 20 cents for fire protection. By fire protection, I
don't mean sprinklers; I mean fire hose cabinets which go in in any
case.

Mr. Shibley: You mean that is the actual cost that came
in on it?

Mr. Tambllyn: That was the tender and there have been
tender changes and the government has changed many things around as
the building went ahead, and I think there have been extras in the
amount of three or four hundred thousand dollars to suit these
changes of theirs.

Mr. Shibley: Yes.

Mr. Tambllyn: So ~~in~~ originally the mechanical system
was worth \$4.75 per square foot, complete. That is, the HVAC part
of it.

Mr. Shibley: And ~~now~~ I was just going to ask you...

Mr. Tambllyn: Before the government started changing
everything.

Mr. Shibley: Yes, and in terms of the quality of that
installation as compared to the Canada Square one for Hydro, what
do you say?

Mr. Tambllyn: It was a high-quality system.

Mr. Finlayson: That is right in Mr. Mitchell's letter.
You see there is a difference between \$5.28 for the federal office

complex.

Mr. Finlayson: ~~Confidential~~ *and good*

now.

Mr. Chairman: I don't know whether Mr. Tamblyn knows them
or not.

Mr. Finlayson: Have you read this letter ~~to~~^{from} your partner?

Mr. Finlayson: Don'tt you think you should?

contradiction on this point. We got price in at around \$5.8 million. *of 11/22*

Mr. Shibley: Did you work it out roughly?

Mr. Shibley: The federal complex, however, is not yet underway.

Mr. Tamblyn: I might say that this is a building not entirely

(Mr. Tambllyn)

comparable to ~~the~~ either of these two here,

Mr. Shibley: I see.

Mr. Tambllyn: Because it was one with long fingers and a lot of outside wall. ^{It} ~~there~~ was one where the architects decided for their own reasons that they wanted the fans way over there, and the ducts were 800 feet long, instead of the usual ~~300x100x100~~ two or three hundred feet long. The fan motors were oversized by a lot because of the heavy pressures on the system, which are almost double that of normal all our systems.

Mr. Shibley: Are you telling me that the base figure

Mr. Tambllyn: ~~Now~~ So that there were some premiums involved in that day and age, which would be of the order of 1967 or 1968, when we tendered that job.

Mr. Shibley: Well, in any event, I think

Mr. Tambllyn: We don't know ~~that~~ whether that is a good system to use as a reference, but it is good in the fact ~~it is an~~ ^{all-air} ~~system~~ system of high-quality design.

Mr. Chairman: Mr. Shibley, do you intend to put that letter in?

Mr. Shibley: It is in.

Mr. Chairman: Oh.

Mr. Finlayson: It is not an exhibit Mr. Chairman. It is appended to the

Mr. Shibley: No, no, ~~it~~ it is an exhibit. We exhibit it. We did exhibit it when Mr. Rasmussen was in the box.

Mr. W. Newman: Mr. Chairman, I'd ~~like~~ like to ask Mr. Tambllyn, Y and R are building the Royal Bank building, are they not? Can you tell me ~~what~~ what the mechanical costs are in that building?

Mr. Tambllyn: No, I don't have any idea.

Mr. W. Newman: Are you doing the work there?

Mr. Shibley: I am ^{Mr. Tambllyn: Age, Sir:} going to leave that topic now with you, Mr. Tambllyn. I want to take you back to the spring of 1971 if I may, and dinner at your home in February of that year at which Mr. ~~Smith~~

Mr. Tambllyn: Smith?

H 2371-4

Sept. 11/73
10:00-10:05 a pm
PLG

Mr. Shibley: Smith and Mr. Zerafa were present, and at which the subject of the Hydro head office building came up for comment. Would you please tell the committee your best recollection

Tape H 2372 follows

Sep. 11/73
10.05 to 10.10 pm
fvk

(Mr. Shibley)

~~... subject of the Hyde Head office buildings in the~~
~~Committee. Could you please tell the committee your best recollection~~
as to what was said on that occasion?

Mr. Genest: Is that 1971, Mr. Shibley?

Mr. Shibley: Nineteen seventy-two, sorry.

Mr. Finlayson: And this is ^a dinner at Mr. Tamblyn's home with Mr. Smith and Mr. Zerafa?

Mr. Shibley: Yes.

Mr. Tamblyn: To the best of my recollection it wasn't ~~at~~ at my home. It was at the Bayview Country Club. Not that that matters in the slightest but that was my recollection.

In general, I recall that the timing was such that ~~this~~ ^{the} form of tender had been called in ^{at} Hydro and I guess the tenderers were waiting around to see what the news was. Smith brought the topic of conversation up that he was going to do this, and do that, and some other things. I reminded him that I was working for Y&R at the time and we were hoping. He said he was hoping too, ^{fairly} and he was ~~coming~~ off the top of his head, about various things, and said he was going to put some time on this. I said to him, ~~was~~ hoping as a friend, that I could possibly save him considerable effort, that I had heard some optimistic comments coming from the Canada Square group, with whom we were still working and having meetings on the Transamerica Building, and that, perhaps, he could save himself some time and use his valuable time in other directions ^{profitably}. ~~more profitably~~ That's all I knew about ~~it~~ at the time and that's what I said.

Mr. Shibley: His evidence, ~~is~~ I think was something like -

An hon. member: Celebrating.

Mr. Tamblyn: Celebrating, no I never said that. I don't know anything about that.

Mr. Shibley: He said: "Don't hold out your hopes too long, they are celebrating over at Canada Square."

Mr. Tamblyn: That's Smith's way of saying something.

Sep. 11/73
10.05 to 10.10 pm
fvk

(Mr. Tamblyn)

I'm telling it to you as well as I can remember.

Mr. Shibley: Yes. And what caused you to—I should go back. Is it a fact that you have been consulting for Hydro for some years?

Mr. Tamblyn: Yes, we've done a number of jobs with them, directly that is.

Mr. Shibley: And you were consulting with them with respect to the first building that was planned for their head office, were you not?

Mr. Tamblyn: We were used as consultants with architects on the building. We're not working for Hydro on this building here, but we were working on it as a direct result of a commission with the team of Gordon Adamson and Shore and Moffat.

Mr. Shibley: So that you would, so to speak, have your ear to the wall pretty well as to what was going on with Hydro and its plans for a head office building?

Mr. Tamblyn: We didn't hear anything from Hydro at all about how they were going to make this decision. It was just a complete dark closet as far as I was concerned. I didn't attempt to ~~maintain~~ ^{them} contact and they certainly didn't contact me.

Mr. Shibley: What caused you to make your comment to Mr. Smith that he should save his time and effort?

Mr. Tamblyn: Just simply that I thought Smith might—
Smith is a busy guy with a ~~lot~~ lots of irons in the fire and I thought he could use his valuable time much more profitably in other directions. Over and out! You're probably going to say, ^{oh} how did I know that Canada Square were optimistic? I heard these comments coming back from some of the ~~same~~ fellows ~~xx~~ who were talking with the Canada Square people, I guess. This is a normal kind of thing. I think every ~~o~~ developer is optimistic but Canada Square were showing optimism and I passed this on to Smith and I told him he might get ~~busy~~ busy in ~~another~~ directiong,

Mr. Shibley: You say that you got this from comments from people at Canada Square? Had you been having dealings?

Sep. 11/73
10.05 to 10.10 pm
fvk

Mr. Tamblyn: No, I hadn't been having any meetings with Canada Square at the time. I can't quote any direct reference at all. Some of our people were working with them on the inspection and follow-up on the Transamerica Building and I guess, probably, they heard some of the scuttlebutt and ~~being~~ ^{fairly} optimistic feelings around there that things were going well.

Mr. Shibley: And that was, according to Mr. Smith, a dinner on ~~the~~ February 1, I think was his evidence.

Mr. Finlayson: No, this witness said the spring of 1972.

Mr. Shibley: Nineteen seventy-two. February 1, 1972.

Mr. Tamblyn: Smith made a diary note of the thing. I didn't. I'd have to struggle to recall.

Mr. Shibley: I'm sorry, it's early February.

Mr. Tamblyn: I know we had a dinner with ^{him.} ~~him~~ I certainly remember that, and if that's the time I made this comment then so be it.

Mr. Renwick: Mr. Chairman, ~~is~~ if I may just ask Mr. Tamblyn, as a matter of communication between people in the same field, and so forth, what you were telling Mr. Smith was that the game was over?

Mr. Tamblyn: I was saying, words to the effect ~~you're~~ ³ you're not sure of these things but you can imply.

~~Mr. Renwick: No, but your assessment of the situation was that the game was over and you had your method of expressing it.~~

(Tape H-2373 follows)

September 11, 1973
10:10 - 10:15 p.m.
B.G.

~~And you aren't sure of these things, what I've said. You apply your ideas profitably~~

Mr. Renwick: No, but your assessment ~~was~~

of the situation was that the game was over. ~~and~~ You had your method of expressing it, Mr. Smith had his method of relaying that information, but the message got through, so much so that his dinner was upset that night.

Mr. Tamblyn: So he says, I didn't ~~know~~ know it at the ^{(time.}

Mr. Renwick: So far as I can gather, he hasn't recovered.

Mr. W. Hodgson: Still upset.

Mr. ~~W.~~ Shibley: I don't know that you got an answer to your question. ^{or February.}

Mr. Finlayson: ~~We don't know whether it was~~ ^{spring 1972}

Mr. Renwick: I think yes. Mr. Tamblyn nodded his head "yes," that the message he was communicating to Mr. Smith was that the game was over, "you might as well take your marbles and go play somewhere else."

^F
Mr. ~~Finlayson~~: Well, Mr. Chairman, with great deference to

Mr. Renwick -

Mr. Genest: *How do we get a nod of the head in Canada?*

Mr. Deans: Well, it's a knowing nod.

Mr. Finlayson: This witness has ~~a~~ said that he had dinner with these gentlemen in the spring of 1972. I gather Mr. Smith said that he was thinking of one in February. This witness simply said that he had heard from some ~~some~~ people in his shop who were apparently dealing with the last details of Canada Square at the Transamerica Building, to the effect that they were fairly optimistic there ~~and~~ and that Mr. Smith ought to start looking at some other job. Now, I don't think, with great respect ^{to} Mr. Renwick, that it's fair to put it to him that what you were really saying is that the game is over, you pick up your marbles and go home, ~~because I think~~ and ~~have~~ then have the witness nod to it, I mean, I ~~think~~ ^{think} that's carrying that evidence a very long way.

September 11, 1971
10:10 - 10:15 p.m.
B.G.

Mr. Tamblin: I've got to side with Mr. McCallum on this one because ~~that's~~ that's about all I knew.

Mr. Genest: That's Mr. Finlayson.

Mr. Finlayson: Gotcha!

Mr. Tamblin: Listen, I knew nothing then or ever since about any political skulduggery at all. I have to admit that I was rather pleased inwardly that old Canada Square were doing ~~quite~~ ^{maybe} quite well; and hoping ~~some of~~ these rumours were okay. I guess my first allegiance certainly was to Y & R, because we have worked a long time on many, many projects with them, but I had the feelings inside me that maybe if Canada Square did get the job they might consider us after all, even though we had been in there telling them that we had to make a decision and we were going this way, not their way.

Mr. Shibley: I don't have any further questions.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: I have a couple of questions I would like to follow up on. Perhaps you can help me. Mr. McCallum and I had a discussion when he was giving evidence, with his background of experience in the field of development work and proposals acting as a lawyer in the field, and then Mr. Zwig and I followed it along a little bit further, I would like to follow it along with you, the traditional tendering system as I ~~was at~~ understand it would mean that you would have your own architect who would consult in the various specialty fields, such as your field, and finally come up with the kind of specifications for a whole structure, including your system, and it would be put out to tender and various contractors would bid on very specific specifications -

Mr. Tamblin: Yes.

Mr. Renwick: - with respect to the building, and you could make the decision because everybody was bidding on the same thing.

Mr. Tamblin: Yes.

Mr. Renwick: And you ^{would} ~~bid~~ basically, or you would make your assessment basically on the question of cost. Now, ~~when you~~ the proposal system in its ~~rudiments~~ rudiments, as I understand it, being relatively new I think in ~~Metropolitan~~ Metropolitan Toronto, requires one

September 11, 1973
10:10 - 10:15 p.m.
B.G.

(Mr. RENwick)

of two ways of proceeding. You either, as I take it from what Mr. McCallum said and I think he used the Star Building as an example, that the people who are required to make the decision, if they decide to go the developer route, will select ^a ~~the~~ developer. They won't have any purported contest of any kind; they just select somebody in whom they have confidence ~~because~~ because they like either what they've seen of his work or otherwise, and they go along with him in order to get the benefit of the imaginative overall ^{conceptual} ~~conceptual~~ work of that developer and whatever team he has put together.

Now, the alternative, into which Hydro, ^{entered} for whatever reasons, ~~entered~~ was to call for proposals from a number of developers and four of them put in their proposals. Then Hydro was faced with the problem of evaluating as amongst those four proposals, and.

(Tape H-2374 follows)

Sep. 11/73
10.15 to 10.20 pm
fvk

(Mr. Renwick)

~~evaluating as amongst those~~ and the suggestion that was made by Mr. McCallum^A I think it was Mr. McCallum certainly by Mr. Zwig^A was that in a situation like that what you'd have to do would be to retain someone outside to evaluate the four proposals for you and then come back to whoever the board was that had to make the final decision and then they would make that decision

Mr. Tambllyn: That's sometimes the way it is done, yes.

Mr. Renwick: The problem that I see^A isn't that perhaps an oversimplification? May it not be possible that you can't really evaluate? The reason that I ask you this question, Mr. Tambllyn, using your field as one part of an overall proposal, — a very important part, but still one part of which there are many other parts, and you're acting for a particular ^{you} — for a person in your field acts for a particular developer and has his ~~particular~~ ~~particular~~ particular air conditioning system and other mechanical parts of the job to quote on and you have your way of doing it and it goes into a package which then comes forward in a proposal. And some other developer ^{has} ~~and~~ his particular team on which he works, or his particular mechanical engineers who are expert in his field, and he comes up with a different system. Not in the air conditioning field but each specialty comes up with their different ~~version~~ version to put into the package. I'm very curious as to how, — say that Hydro had said: "Look, we don't build head office buildings very often. We certainly don't call for proposals for head office buildings very often and we think it's important. We're going to consult somebody outside to do some basic work of evaluation for us." Who could you possibly consult that could make decisions with ~~respect~~ respect to your air conditioning system as compared to somebody else's air conditioning system?

Mr. Tambllyn: I think you would look for somebody who had ^a special skills in air conditioning and who is not involved in any of those proposals. He would ~~be~~ bring in the objectivity, that you're looking for.

Mr. Renwick: No, I'm talking about a consultant who would not only do the air conditioning but would do an overall

Sep. 11/73
10.15 to 10.20 pm
fvk

(Mr. Renwick)

qualitative, and quantitative evaluation of four proposals. I'm beginning to think it's impossible.

Mr. Tamblin: I guess it's impossible to do it in every knit-picking little detail and have the absolute best, perfect result~~ing~~^{ing} ~~of~~ opinion of everything. I think there's a great deal of subjective opinion going into this sort of thing and the best thing that one can do is to use one's own forces, if they're sufficiently skilled. The Hydro's group were quite ~~sk~~ skilled, having already been through this exercise and knowing pretty well what they would have to pay for a high quality building, ~~and~~^{and} having the experience ~~in~~ of building many other projects, I suppose. Possibly, Ontario Government use the technique and they have ~~I~~ I guess, occasionally they bring in outside help to work with them, but they have built up their own expertise in-house as well to analyse development proposals. There would be nothing wrong, probably in bringing in another developer who had a local reputation for being a smart fellow and letting him look over the proposals, because if he were not proposing himself he would have that objectivity ^{he would} and have some of the skills ^{that} ~~that~~ would be necessary to say: "I think this ^{one} is a little better."

Mr. Renwick: But leaving aside somebody in this specific field which, I think, relative, in Metropolitan Toronto, is kind of unreal in a sense.

Mr. Tamblin: ^{There are} ~~There are~~ highly skilled developers in Metropolitan Toronto; ~~xxxxxx~~ not everyone of them ~~is~~ bid on every project and I daresay they would ~~xxxxxx~~ probably loan themselves for evaluation of bids if he wanted to use them and I think they might be a good source of expertise.

Mr. Renwick: But there's no consulting body in Toronto, or consulting firm in Toronto who could do an overall evaluation?

Mr. Tamblin: No, I don't think there are, although people like Hanscomb Roy and other quantity surveyors offer this kind of evaluation at times, ~~but~~ I don't know whether you would

Sep. 11/73
10.15 to 10.20 pm
fvk

(Mr. Tamblyn)

type of survey
~~consider~~ it was the best ~~evaluation~~ you could get.

Mr. Renwick: But strictly from the point of view
of ~~quantitative~~ quantity survey ^{work} ~~world~~?

Mr. Tamblyn: Yes, I think that they would tend to
be dealing more quantitatively and perhaps less on overall ~~image~~
~~image~~ and other aspects. ^P ~~perhaps a developer~~ *a very sophisticated developer* might be
the best person to evaluate ~~an~~ overall set of performance standards.

(Tape H-2375 follows)

Sept. 11, 1973
8x22x8x82x
10.20-10.25 p.m.
M.F.

H - 2375 - 1

(Mr-Tamblyn)

~~might be the best person to evaluate and make a decision~~

~~information is needed~~ That's just a personal opinion but ~~-----~~

Mr. Renwick: That was all I was asking for, because the question ~~-----~~

Mr. Tamblyn: You would have to be one who wasn't one of the gang that was bidding, that's all, or connected in any way.

Mr. Renwick: The question came up because are we going to be saying, or must we say, to anybody that is expending public funds, "oh no, you can't have the benefits of the proposal system; you must stick to the traditional method of calling for tenders in the traditional sense".

Mr. Tamblyn: I think that would be a great pity because, whatever may be said against it, the proposal system has certainly helped out with prices. I am sure that if you just simply give the group of professionals their head and ^{say} ~~then~~ go ahead and design something, these are the ^{parameters} ~~parameters~~, that the cost is not considered nearly as carefully, and efficiency and optimizing of all the details ~~and all the details involving construction~~ involving construction, are not considered nearly as efficiently as if there was a competition in the overall design and cost and the leasing rate.

As an example, for instance, university residences, it seems to me, were climbing steadily to \$8,000 a bid, \$9,000 abid, \$10,000 and even \$11,000 in some cases. The minute the proposal system was adopted, we were a part of the development groups who were quoting at less than \$5,000. I am not sure that the buildings were absolutely the same quality, they ~~probably~~ weren't, but certainly the beds were there and the amenities were there, everything that the government asked for in the performance specification was there. There were probably poorer detail, probably some things not as good, but certainly the idea of going on the performance and development type of tendering did produce remarkable results in terms of what was actually being spent.

H - 2375 - 2

Mr. Chairman: What is the answer then to protect the public as far as the expenditure is concerned?

Mr. Tamblyn: Well you are asking for a rather personal opinion on this and ~~and~~-----

Mr. Chairman: ~~Now~~ I am asking your ~~and~~ *opinion*

Mr. Tamblyn: I am very encouraged to see what the idea of development tendering has done. If you want my personal opinion about \$4.92 a foot, I think that is pretty damn good for what is being offered here. I think that ~~and~~-----

Mr. Chairman: No, but the point I am making ~~and~~-----

Mr. Tamblyn: The federal government have looked at this long and ~~and~~-----

Mr. Genest: Don't lose that point, Mr. Chairman.

Mr. Renwick: What are you registering now?

Mr. Chairman: Thanks to Mr. Allan that's a real ray of sunshine.

Mr. Tamblyn: The federal government have studied this in great detail over the last 10 years and they are moving more and more toward the idea of development tendering and getting tremendously good value for it.

Mr. Renwick: Yes, but how do you persuade the public ultimately that you are getting good value on that route? I have heard some criticism of the federal complex known as the Pearson building, from the cost point of view.

Mr. Tamblyn: Well they asked for a whole lot of very fancy things there ~~and~~ as a matter of fact they started out by saying this is one building we don't care so much about the cost of because we are on show to the whole world here in this building. This is External ~~External~~ Affairs, and we will let this one be a little bit higher in cost. We don't want to run away with it but we are willing to talk \$25 a square foot, whereas in other buildings we are willing to talk \$20, ~~and~~ *and* when it really got down to what they really meant by \$25, it turned out that what it really meant was

Sept. 11, 1973
10.20-10.25 p.m.
M.F.

H - 2375 - 3

(Mr. Tamblyn)

about \$30 or \$32 or \$33.

Mr. Renwick: But the Chairman's question ~~-----~~

Mr. Chairman: I am simply concerned - and you may or may not have the answer - but in your opinion how is the public's pocketbook protected in the proposal procedure?

Mr. Tamblyn: Well, I believe that sophisticated owners today who wish to develop something could use the idea of having a team to put together a set of performance specifications, and then to call from selected people who had a reputation in this field for bids which would yield the results asked for in the performance specifications, and then the same team who were carefully selected not to have anything to do with the others who were bidding, so that there would be complete objectivity there and impartiality which possibly may help the owner in making a decision. They would make recommendations on the basis of how they saw the tenders and they would ask for a lot of details to be included in the tender, possibly ask for drawings, so they could discuss and decide upon the image created by the kind of design it was ~~and~~ and they would look for a lot of the details about what was being included in it and even the kind of mechanical system, ^{whether} ~~it~~ it be an all-air or air-water, for instance.

~~Mr. Chairman: I am simply concerned - and you may or may not have the answer - but in your opinion how is the public's pocketbook protected in the proposal procedure?~~

~~Mr. Tamblyn: Well, I believe that sophisticated owners today who wish to develop something could use the idea of having a team to put together a set of performance specifications, and then to call from selected people who had a reputation in this field for bids which would yield the results asked for in the performance specifications, and then the same team who were carefully selected not to have anything to do with the others who were bidding, so that there would be complete objectivity there and impartiality which possibly may help the owner in making a decision. They would make recommendations on the basis of how they saw the tenders and they would ask for a lot of details to be included in the tender, possibly ask for drawings, so they could discuss and decide upon the image created by the kind of design it was and they would look for a lot of the details about what was being included in it and even the kind of mechanical system, whether it be an all-air or air-water, for instance.~~

Tape H - 2376 follows

September 11, 1973
10.25 - 10.30 p.m.
M.R.

(Mr. Tambllyn)

~~...whether it would be an all-air or air-water, for instance.~~

Mr. Chairman: So you're saying that this is done by an impartial team of experts. Is there any need to disclose costs in your mind? Or is it reasonable that the builder^{er} should be able to keep his finances secret?

Mr. Tambllyn: Well, I feel that ^{if} this is done fairly that there is no need to disclose costs, any more than any contractor ~~who~~ who is bidding on any job has to explain what ~~are~~ the details of his low ^{bid} were.

^{W.}
Mr. ~~W.~~ Hodgson: Mr. Chairman, may I ask a question to that point?

Mr. Chairman: Yes. Mr. ~~W.~~ Hodgson.

^{W.}
Mr. ~~W.~~ Hodgson: I have had the experience of being on the building committees of about five public buildings. And my experience in those, ~~the~~ the public never really knew the true costing or the tender price when it came in, because I don't know what your experience has been and I'd like to ask you this, but ⁱⁿ my experience ~~we~~ we never got a building built for the low tender price. It was always extras here and extras there, and sometimes it was the landlord's fault and other times it was the failure of the architect to come across with the proper specifications. ~~and~~ ^{so} So, actually, do you know of any building that has ever been built ~~at~~ at the true low tender price?

In my experience I haven't.

Mr. Tambllyn: Well, I've worked on all kinds of buildings where we have come in less than the ~~low~~ tender price, where there was an allowance for changes made and very sensibly made for about three per cent, and where we have never used it up and handed back the money.

^{W.}
Mr. ~~W.~~ Hodgson: Well, that would be the exception though, wouldn't it?

Mr. Tambllyn: No I guess probably a third or a quarter of the ones we work ^{on} might have had that arrangement and we did not exceed the contingency of three per cent.

September 11, 1973
10.25 - 10.30 p.m.
M.R.

W.
Mr. ~~W. J. R.~~ Hodgson: Tender pricing? I mean I'm not only talking about ...

Mr. Tamblin: These ~~are~~ ^{were} very carefully detailed schools, but I'll tell you for what it's worth ^{that} there are also buildings that seem to just go on and on and the ...

W.
Mr. ~~W. J. R.~~ Hodgson: Yes, that's right. You never know what ...

Mr. Tamblin: ...price is just—it wasn't controlled properly in the first place.

W.
Mr. ~~W. J. R.~~ Hodgson: Particularly hospitals.

Mr. Tamblin: Right. It may be, ~~but~~ although ~~it doesn't think that~~ in lump sum bidding I don't think that there has been a tremendous extravagance on that on most buildings. I think that the people have occasionally exceeded a reasonable contingency, but we're talking amounts of one, two and three per cent sort of thing in most cases. But for what it's worth, even that may be saved on these development call types ...

W.
Mr. ~~W. J. R.~~ Hodgson: I agree with that.

Mr. Tamblin: ...because you say to the developer, "I'm taking your bid," and that's it.

W.
Mr. ~~W. J. R.~~ Hodgson: Yes, that's right.

Mr. Tamblin: "Don't come to me with extras."

If your architect made a mistake, then that's your problem. You can work it out with him."

W.
Mr. ~~W. J. R.~~ Hodgson: ~~I'm~~ ^{From} ~~much~~ what I've heard about developers over tenders since I came on this committee, I'm very much in favour of doing ^{it} by the developer putting a bid in. You really know what the building is going to cost you, the maximum at least when you are ~~start~~ ^{it} finished, ~~which~~ ^{while} you don't know by the ~~the~~ tender what you are going to pay at the final end.

Mr. Chairman: Any other questions?

September 11, 1973
10.25 - 10.30 p.m.
M.R.

Mr. Renwick: Yes, Mr. Chairman. I take it your answer to the chairman was that public bodies such as Hydro ~~was~~ using it just for the purpose of our discussion, not for this particular point ~~was~~ would have had to put together ~~was~~ sort of an ad hoc team of experts to properly evaluate and select persons who had no ~~relationship~~ direct or indirect interest in it.

Mr. Tamblyn: I think it might have taken a great deal of criticism off their shoulders if they had.

Mr. Renwick: Sure. In hindsight it would have. But is that feasible? Would that be feasible? Who, in your field, for example, would they have selected, since you would ~~have~~ appear on the face of it to have ended up in the same field for Y and R or for Canada Square or for Ellis-Don, had the flip of the coin gone the other way and ...

Mr. Tamblyn: I don't think it would be hard to find one. There are about 60 people doing my kind of work in Toronto and they have varying degrees of experience and levels of ...

Mr. Chairman: Do they all have political associations?

Mr. Tamblyn: Yes, probably.

Mr. Chairman: That, I think, is the problem, that in this day and age I'm not so sure that any of our reputations are ...

Mr. Tamblyn: Most engineers ~~are not~~ never find any time for politics. Engineers as a group are very political and I think any of the major engineers involved in my kind of work would probably be pleased ~~—~~ ^{ed} providing they didn't feel it would be more lucrative to be involved with one of the ~~design~~ design teams. I personally would. I would rather be with a design team than ³¹ being some kind of a judge here but in the new kind of business I'm doing I think I'll probably end up being more of a judge than I will be on design teams.

September 11, 1973
10.25 - 10.30 p.m.
M.R.

Mr. Chairman: I'm not so sure that the reputations of any of us are so virginal that some member of the public can not find something to throw stones at.

Mr. Tambllyn: Right.

Mr. Chairman: And that's one of the problems that we are perhaps dealing with here.

Mr. Renwick: I have one further question. I take it that the installation of an airconditioning system of the kind which you've conceived, or the kind which Canada Square has conceived, ~~doesn't fall to be discussed in the~~
~~question of air conditioning.~~

H-2377 to follow

(Mr. Renwick)

~~message has conceived~~ doesn't fall to be discussed in the question of whether it is luxury or not luxury. I take it that your evidence is that it is in the interests of the persons who are going to be either paying the rent or the ultimate owners of the building that to get good value you have got to have a good air-conditioning system, and that it doesn't pay to cut corners. Is that ~~all~~.

Mr. Tamblyn: The two things you look for are on the one hand the owner's acceptance which is best demonstrated I think by low-complaint ratio, and on the other hand the overall, all and out owning costs of the system, which involves ~~its~~ its operating costs, its staffing costs, its amortization too.

Mr. Renwick: But it is basically a judgmental value. No one could be said that it was a ~~low~~ luxury item to go for the best in your field.

Mr. Tamblyn: I feel in my field the best costs very little more and is well ~~worth~~ worth going for.

Mr. Renwick: Thank you Mr. Chairman.

Mr. Chairman: Mr. W. Newman

Mr. W. Newman: My question Mr. Tamblyn ^{as} ~~is~~ the result of your evidence tonight ~~that~~ is that you are quite obviously an expert in your field and an expert perhaps in building, and you just mentioned a moment ago that you would probably wind up being a judge, and I'd like to reiterate an answer you gave before. Do you feel that Hydro are getting a damn good price at \$4.92 for their building?

Mr. Renwick: Oh, we got ~~that~~ the message

Mr. Tamblyn: Well I am far from being an expert on that one. ~~That~~ ^{That} involves a whole lot more than my little field, but I am paying \$7.50 a square foot for my accommodation, and I am ~~not~~ paying hydro on top of that, and I am paying some damn thing of 6.15 per cent for looking into the court and so on on top of that again, and I know that the average rental rate around...and of course, you can't compare the rental rate in

Sept. 11/73
10:30-10:35 pm
PLG

(Mr. Tamblyn)

downtown Toronto with \$4.92 because I am not quite sure what all is in the \$4.92 and what isn't in it, but certainly if its comparing in any way at all with rental rates in Toronto, that's a good figure.

Mr. Chairman: Any other questions of Mr. Tamblyn? Did you have something Mr. Genest?

Mr. Genest: Oh no sir.

Mr. Renwick: Will you go ahead with Mr. Candy now?

Mr. Chairman: I think not. Mr. Tamblyn, thank you very much for ~~his~~ being with us this evening.

Now, speaking to the committee, the order as I understand it for tomorrow, subject to change without notice, is Mr. Candy, Mr. Gathercole, Mr. Coles, Mr. Dean and Mr. Lamb. Now, Mr. Shibley needs a little time to have an interview with Mr. Anson-Cartwright tomorrow morning, and suggests a 10:30 assembly time. Are we agreed to that?

Mr. Shibley: I'll talk to you about it.

Mr. Genest: Who.

Mr. Shibley: I'll talk to you about it afterwards.

Mr. Genest: All right.

Mr. Chairman: The point is that he will want to give you and Mr. Nastich a chance, I don't necessarily say tomorrow morning, but before it is presented for you to look at ^{it} with him.

Mr. Deans: We could change the time. Maybe we could get a head start and we could start at 10 o'clock.

Mr. Shibley: That suits me perfectly.

Mr. Finlayson: I am going to get a copy of Mr. Anson-Cartwright's report too I take it?

Mr. Chairman: I don't really...

Mr. Finlayson: ~~Well~~ Well, there are two sides to this thing Mr. Chairman.

Mr. Chairman: Well I am in the other position that maybe Y and R want a copy of it and maybe ...

Sept 11/73
10:30-10:35 pm
PLG

Mr. Finlayson: Well I am in a little different position than Y and R.


Mr. Chairman: Well I think you are in a different position, but that is the thing I am weighing in my mind.

Mr. Finlayson: Does Mr. Shibley have any objection to my having it?

Mr. Chairman: I don't think so.

Mr. Finlayson: When Mr. Genest gets it?

Mr. Shibley: What I'd like to do Mr. Chairman is, I would like to have Mr. Nastich get together with Mr. Anson-Cartwright tomorrow afternoon to go over this material, because this doesn't just involve an ~~even~~ evaluation of Canada Square, but it cuts across the whole of the approach taken by Hydro and what I had intended was that Mr. Nastich and Mr. Anson-Cartwright would review the draft tomorrow, ~~we~~ settle on as much of it as they can agree upon, and where they disagree, well then the Anson-Cartwright report will ~~sit~~ ^{just sit} as he sees it with Mr. Nastich knowing ~~where~~ where he differs, and then as soon as the report is settled by that method, in the sense of ^I I don't want anything taken from this, ~~but I think in~~



Tape H 2378 follows

(Mr. Shibley)

~~by that method in the sense of I don't want anything taken from~~
~~But~~

~~But~~ I think that in fairness to Hydro they should have the opportunity to provide some input to Anson-Cartwright before that report is made final. And then once that happens, no, I have no objection ~~to that report going to Mr. Finlayson.~~ But until —

Mr. Finlayson: That's fine.

Mr. Shibley: I don't want it —

Mr. Finlayson: ^{That's} Okay.

Mr. Shibley: Right. Fine.

Mr. Chairman: Then if there's no objection from the members to the later starting hour of 10:30, we are adjourned.

Mr. Deans: I have no objection, but I know Mr. Walker would want to say that we should start at ten were he here.

Mr. Chairman: I'll deal with Mr. Walker. We are adjourned for eleven hours and 53 minutes until 10:30 tomorrow morning.

The committee adjourned at 10:36 o'clock p.m.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice
G.D. Finlayson, QC

Chairman of the board, Tamblyn Mitchell and Partners Ltd.:

R.T. Tamblyn

The correct name of J.B. Cronyn's counsel
is J.E. Eberle, QC.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, September 12, 1973

Morning session

2379-2406

LEGISLATURE OF ONTARIO

SELECT COMMITTEE — HYDRO HQTRS.
H-2379-1

September 12, 1973
10:32 - 10:35 a.m.
B.G.

The committee met at 10:32 o'clock, a.m., ~~there~~ in the members' board room.

Mr. Chairman: Ladies and gentlemen, I apologize to any of you who may not have had notice that we were sitting at 10:30 a.m. this morning rather than 10:00 a.m., but it is now 10:32 a.m., I call the meeting to order, and Mr. Genest, I see you are ~~reaching~~ reaching for your microphone, do you want to speak?

Mr. Genest: I take it the next witness, Mr. Chairman, is Mr. Candy.

Mr. Chairman: That is my understanding.

Mr. Genest: I had a brief statement I wish to make to the committee, ~~was~~ which I wished to make on Monday, but which at Mr. Shibley's request I put off until the Hydro witnesses were ~~reached~~ reached again, and that's in connection with Mr. McCallum's evidence and some press statements that appeared which are a misunderstanding of the effect of his evidence. I am just trying to find the place in Hansard now, but the impression that has been left by some of the press reports, Mr. Chairman, is that on the subject of the formula for rent reduction the Commission acted against Mr. McCallum's advice. I will find the reference in a moment in Hansard; I had it, but somebody took my copy away.

The ~~variant~~ ^{word} "against my advice" was put by Mr. Shibley, was repeated by Mr. McCallum, but the gist of his evidence makes it quite clear that he did not tell the Commission ^{"If you sign this,} ~~it's~~ ^{it's} against my advice." And, as soon as he gets here, I'm sure that if any member of the committee wants to question him on that aspect, that will be made quite clear. At no time did Mr. McCallum say to the Commission, "I advise you not to do this".

Mr. Chairman: I think I understand that, Mr. Genest.

Mr. Genest: And I think when you read the excerpt from the transcript where that occurred, that is made clear. Mr. McCallum repeated ^a suggestion made by Mr. Shibley, and said ^{we} ~~we~~ can't let it

September 12, 1973
10:32 - 10:35 a.m.
B.G.

(Mr. Genest)

rest there," and he explained exactly what he did. And I thought that should be made clear.

Mr. Chairman: I think again it was a matter of degree. I think he was discussing it with his clients, and indicated they didn't accept all of his advice, but that at no time did he, with the final draft, advise them that they —

Mr. Genest: No, but he never said, "Don't do this".

Mr. Chairman: Right.

Mr. Genest: He said, "We couldn't get this; you have to make the decision." And there is an important distinction; it may be subtle but it's important.

Mr. Chairman: Thank you, Mr. Genest. Mr. Candy.

Mr. Shibley: Mr. Candy, —

Mr. Chairman: Mr. Candy, I just remind you, as you know, that you've been sworn before.

Mr. Candy: Yes, sir.

Mr. Chairman: I can't say "welcome back" to you because you have been here all the time, ~~but I don't want to say~~

(Tape H-2380 follows)

Sept. 12/73
10:35 - 10:40 am
JLP

~~Mr. Chairman: Mr. Candy, I just wanted to say, as you know, that you've been here before.~~

~~Mr. Candy: Yes, Mr. Chairman.~~

~~Mr. Chairman: I can't say "welcome back" to you because you've been here all the time,~~ but we are ready to proceed with you and we hope it will be the last and final appearance.

Mr. Shibley: Mr. Chairman, I had a chance to have a few minutes with Mr. Candy ~~xx~~ earlier and he reminded me, and I think it's correct, that I had not dealt with a few matters with him that are cogent. And before I reach those matters, I want to develop through Mr. Candy something of his expertise and experience as an architect, and his connection with other projects, because, as the committee knows, Mr. Candy was the chief negotiator ~~as~~ on behalf of Hydro, dealing with Mr. Moog, and some understanding of his expertise and background, I think, should be a matter of record.

Mr. Candy, if you will tell the committee something of your history.

Mr. Candy: Thank you, Mr. Shibley. My experience dates back to about 1930, which as you recall was right in the depths of the Depression. I have had about 40 years of experience in the construction business.

MY ~~FIRST~~ job was in a private office in Toronto, where I spent about five or six years working ^{on} ~~at~~ various types of commercial and, basically, domestic. In those days, if you got two \$20,000 houses in a year, you were busy.

I then went to England. I worked for the Office of Works in the British Government in Whitehall in London, doing unemployment exchange buildings. And then I went to work for the London ~~and~~ Midland ^{and} Scottish Railway, during which time I designed the School of Transport in Derby, which is quite a large building for the training of a staff in signalling. It was a building comprising about 50 bedrooms, dining-rooms, mono-railway room, to train the staff in signalling and the classrooms and so on. I carried out that job from the start to the finish for the LMS Railway.

(Mr. Candy)

While I was in England, I took a special course in design at the Bartlett School of Architecture in London.

I then came back to Toronto and since I came back, and prior to my employment with Ontario Hydro, I had been quite deeply involved and these are some of the projects:

The St. Thomas Hospital at St. Thomas, which was built in the time of the previous Liberal Government. I was responsible for all the ~~exam~~ drawings and negotiation for the alterations and additions to Eaton MEMORIAL Church, in which I attended all the meetings with the Board, with R.Y. Eaton, John David Eaton, J.J. Vaughan, and Elliott and all the people involved with Eatons.

I was heavily involved in the buildings for the new Rainbow Bridge at Niagara Falls, which was carried out by the office that I was in including the Carillon Tower.

I WAS ~~RETAI~~ retained by B.C. Hydro as a consultant on the Arrow Lakes Dam for the buildings and the structures on the Arrow Lakes Dam for which I received an honour award for excellence in design as my contribution to that.

I was involved in the design and construction of Sunnybrook Hospital and was responsible for doing all the drawings for two of the buildings in that complex.

And I guess if anybody asked me what the ^{most} ~~importance~~ thing I've done in my life, I'll have to think about it again after this, but I think it would have to be the St. Lawrence power project. And in the St. Lawrence power project, aside from the powerhouse itself, the rehabilitation scheme in which we moved about 6500 people. We had to build, as you know, new towns; we had 40 miles of No. 2 highway; we had about 40 miles of the CNR track; we had to build new railway stations; we built the new towns; we moved hundreds of houses from their present locations to new locations; we put in the services. I was involved in letting those contracts; I was responsible for the lay-out of the towns, and for the design and construction of the shopping centres which we built, to take the place of the general stores and the hardware ~~stores and what have you~~

(Tape H-2381 follows)

Sept. 12, 1973
10.40-10.45 a.m.
M.P.

H - 2381 - 1

(Mr. Candy)

~~which we went to take the place of the general stores and~~
~~the general stores.~~ ^{and} what have you, in the various towns.
But to give you an idea of the negotiation, I think that aside
from — we moved various cemeteries, we moved about 5,000 graves
and about 2,600 headstones — I still have a little trouble with
some of those; the headstones are sinking in places — I have
letters on my desk now, 15 years after, from the dead.

But with regard to churches, it was a very interesting
situation. We had about 23 churches involved and when ~~they~~ we
built these new towns, of course, there were fewer towns and larger
towns and the congregations had to amalgamate. So we wound up
building about 14 new churches. Now we allowed the churches to
retain their own architects, to our approval, but my job was to
ensure that with seven denominations they were all treated
exactly the same, ^{and} the different religious denominations, of
course, require different facilities, and we were faced with one
denomination having a frame church with no foundation, a brick
~~church~~ church with a dugout ~~with~~ with a furnace underneath it,
and maybe a rectory or a manse that's frame, ~~and~~ there was quite
a combination of various types of buildings and out of this I had
to decide sort of what they'd get for, what they had, treating them
all on a very fair basis.

This involved many meetings with church groups and church
bodies, combined congregations and so on, to settle these things.
Then we had to provide furniture for these churches and this
involved determining the type and the cost of furniture for various
denominations. ^{we had everything from a Casavante pipe organ to}
an old upright piano and we had to determine, we gave them all
electronic organs except the one church that ^{had} had the Casavante
organ, and of course when we built the new church then you take
the organ and pull the console away from the pipes and ~~then~~ you
are into an electronic type of operation. um

H - 2381 - 2

Mr. Shibley: That move for the St. Lawrence Seaway was a very massive undertaking?

Mr. Candy: Yes, sir.

Mr. Shibley: And I gather from an architectural point of view your responsibility ranged across the whole spectrum of the type of buildings that had to be removed, relocated or reconstructed, is that right?

Mr. Candy: That's right.

Mr. Shibley: And that whole endeavour in terms of that move fell to you as being the person who peaked the corps of people with responsibility?

Mr. Candy: My job was the design, the relocation; the property department, ^{of} ~~and the~~ course, of Ontario Hydro did the negotiation for properties ~~land~~ and businesses and this type of thing.

Mr. Shibley: Now, Mr. Candy, in terms of ~~as~~ aside from your architectural efforts as an architect, had you ever undertaken any negotiations of a financial nature?

Mr. Candy: Yes. On two occasions. We have [^]for instance, on our Bruce generating station, we have gone into areas with large masses of people, of employees, where there are no housing facilities for these people and there is no incentive for a developer to go in and build these facilities, particularly on some plants, of course, we move people in and the population may decrease when we get through. These towns don't change very much and their standard of living is pretty well fixed.

I negotiated 54 apartment suites to be constructed in Deep River for ^{our} Rolphton nuclear set-up and we have a school at Rolphton for training the staff; we had to get accommodation. That was negotiated, not on the basis that we will ever own the buildings, it was negotiated on a guaranteed rental situation, based on a certain number of years for a certain percentage of occupancy.

Sept. 12, 1973
10.40-10.45 p.m.
M.F.

H - 2381 - 3

Mr. Shibley: What other negotiations -----

Mr. Candy: I did the same thing in Port Elgin for 96
apartment suites which amounted to three buildings, and that
was on the ~~same~~ same kind of a basis.

Mr. Shibley: ^{Yes.} Now you were responsible, as the person
designated by Hydro, to have most communication with ~~Mr. Mac~~
~~on behalf of Canada. Same referable~~

Tape H - 2382 follows

Sep. 12/73
10.45 to 10.50 am
fvk

(Mr. Shibley)

~~...person indicated by name to have made communication~~
with Mr. Moog on behalf of Canada Square referable to the head office building. Is that correct?

Mr. Candy: Yes.

Mr. ~~Sh~~ Shibley: And in particular, you had dealings with him respecting such things as the costing of the building? I'm thinking now ^{of} discussions between you respecting the fact that the building would ~~have~~ cost \$34.00 per square foot.

Mr. Candy: Yes.

Mr. Shibley: Now, when did you first have discussion with Mr. Moog in that regard?

Mr. Candy: I think the only discussion, the thing that we were trying to relate it to, ^{was;} I was aware of the fact that the OISE building was \$32.00 and we were looking at that at the type of quality we were talking about.

Mr. Shibley: I'm thinking rather in terms of definition. In your mind, do I take it that when you and Mr. Moog were talking of cost of the building, you had in mind actual cost of construction, plus design fees, plus interim financing?

Mr. Candy: That is correct.

Mr. Shibley: And that was the basis of your discussion with Mr. Moog from the outset?

Mr. Candy: No, I wouldn't say that, Mr. Shibley. This \$34.00 that I established I did not establish until after I had received the proposals.

Mr. Shibley: I see, but I'm not really directing your mind to the amount so much as the -

Mr. Candy: Oh, I see.

Mr. Shibley: - basis of computation of the amount. Your understanding, in the course of your discussions with Mr. Moog, when you were talking about the building costing, whether it be \$32.00 or \$35.00 or whatever it was, your understanding of what was intended when you talked about the cost of the ~~base~~ building was the actual construction costs, plus interim financing, plus

Sep. 12/73
10.45 to 10.50 am
fvk

(Mr. Shibley)

design fees?

Mr. Candy: That is correct.

Mr. Shibley: And was that the basis of your discussion with Mr. Moog from the outset?

Mr. Candy: This was always the thinking and this is what I was geared to ^{was} ~~with~~ the complete package.

Mr. Shibley: Yes. I want to know whether that ~~is~~ was your definition of costs of the building from the outset of your discussions with Mr. Moog?

Mr. Candy: Yes, I would say ^{it was} ~~they were~~

Mr. Shibley: And that extended right back into 1971?

Mr. Candy: Yes. This grew from the OISE building

^{where} ~~where~~ I found out that this was the kind of a deal.

Mr. Shibley: You started having your discussions with Mr. Moog on June 11, ~~1970~~ 1971?

Mr. Candy: Yes.

Mr. Shibley: And whatever were your communications with them from time to time thereafter, let's say during the interval even pending November of 1971, did you discuss the question of costs and your understanding of what that would mean?

Mr. Candy: We did not discuss the cost per square foot, but we certainly both agreed that when we talked costs we were talking about a complete package.

Mr. Shibley: And when you say "a complete package" you are talking of defining costs in the way I've outlined?

Mr. Candy: Yes, the cost of the building.

Mr. Shibley: And did Mr. Moog agree with you within that period of time that when cost of the building was being discussed, that the elements entering into that cost would be cost of construction, interim financing and designing?

Mr. Candy: Yes, there was nothing to lead me to believe otherwise during that period.

Mr. Shibley: He agreed to that with you?

Mr. Candy: Yes, I would say so. It was always cost.

Sep. 12/73
10.45 to 10.50 p.m.
fvk

Mr. Shibley: And did he continue to agree that that was what was intended, respecting the computation of cost of the building, let us say, as at July 19, 1972, when the commission passed upon letting the contract to him?

Mr. Candy: That was certainly my understanding at that meeting of July 18, that we were talking cost.

Mr. Shibley: And when you talked cost again, I want to be clear as to what you mean, you are talking about the three elements that I have repeatedly referred to?

Mr. Candy: That's right. That's correct.

Mr. Shibley: You had a meeting with him on July 18 and there has been a memorandum filed. Before we deal with that meeting, do I take it that it was only subsequent to the approval of the contract by the commission, and subsequent to the publication to the press and, through it to the public, in August of 1972 —

(Tape H 2383 follows)

September 12, 1973
10.59 - 10.55a.m.
M.R.

(Mr. Shibley)

~~Mr. Shibley: I was just going to mention that.~~

Mr. Genest: Mr. Shibley, what do you mean by

"approval of the contract"?

Mr. Candy: I was just going to mention that.

Mr. Shibley: Well, ~~I don't~~ don't take anything on it. It was only subsequent to July 19 and in fact, ~~the~~ only subsequent to August 25, I believe, when the press release was effected.

Mr. Candy: Yes.

Mr. Shibley: It was only after the press release was made in August of 1972 that Mr. Moog took a different position as to the computation of the \$34 per square foot figure. Is that so?

Mr. Candy: Yes. I'm not so sure. I'm not - you may be right on the date in August but ~~that~~ it was certainly subsequent to July 19th when this became a problem and which was quite [^]concern to both Mr. McCallum and ~~myself~~ myself.

Mr. Finlayson: The witness ~~that~~ ^{was} Mr. Shibley got in mind the letter of August 24th? I thought that that set forth a formula as to cost on behalf of Canada Square.

Mr. Shibley: Thank you, Mr. Finlayson. Perhaps the witness could be shown Exhibit 209, dated August 24th, 1972.

Now, I might say, Mr. Candy, this letter is dated as of the same date as I think Mr. Bradshaw's first draft of an agreement.

Mr. Candy: Yes.

Mr. Shibley: ^{ce} that he drew subsequent to instructions received by him at a meeting with you and others on August 3rd. And, as I say, the letter came as a separate item or at least has the same date as his first draft agreement. Was this the first occasion on which you became alert to the circumstance that Mr. Moog's concept of what was cost was different

September 12, 1973
10.50 - 10.55 a.m.
M.R.

(Mr. Shibley)

than what had been your understanding with him up to that time?

Mr. Candy: I would say that is correct, yes.

Mr. Shibley: Now, do you - and I take it also from what others have said that the position outlined in the letter of August 24 was not accepted by Hydro?

Mr. Candy: Yes, I would say that is right.

Mr. Shibley: Yes. Now, did you take up with Mr. Moog that what he was then contending for as of August 24th was a violation of your - not in accord with the understanding you had had with him up until the time the commission approved of negotiating a contract with Canada Square on July 19. Did you take that up with him?

Mr. Candy: Well I think I have a memorandum I wrote to Mr. McCallum on this. I'm not sure of the date of that, giving him an interpretation that I had at that time.

Mr. Shibley: I think what you did is had discussion with Mr. Moog and then ~~you~~

Mr. Candy: Yes.

Mr. Shibley: ~~you~~ submitted to Mr. McCallum a proposed draft that might meet with acceptance by the developer.

Mr. Candy: Yes. What date was that memorandum?

Mr. Shibley: That's a September document - we'll find it for you in a moment ~~but~~ for the moment what I'm interested in establishing is that so far as you were concerned was Mr. Moog reneging on the terms of the arrangement he had made with you prior to July 19 as to what elements should enter into costing this building?

Mr. Candy: As to what elements should enter into it?

Mr. Shibley: As the three elements that I have repeatedly referred to?

Mr. Candy: Well, yes I would say that the discussions that we had later were different to the discussions we had prior to that. My understanding prior to that that it would be

September 12, 1973
10.50 - 10.55 a.m.
M.R.


(Mr. Candy)

the cost of the building, the actual cost and ~~for~~

Mr. Shibley: You heard Mr. McCallum give
evidence?

Mr. Candy: Yes.

Mr. Shibley: And he said so far - I'm paraphrasing
again - but I took the thrust of his evidence to be that
Mr. Moog had made one deal with you, but when it came time
to draw the documents, he was not prepared to ~~...~~



H-2384 to follow

(Mr. Shibley)

~~Mr. Candy had made one deal with you, but when it came~~
~~time to draw the documents, he was not prepared to have that~~
type of documentation, not those terms documented as part of
the final agreement.

Mr. Candy: Yes, I think that is correct.

Mr. Shibley: So that the agreement you had with Moog
as to the interpretation of costing the building became a very
major issue during the period subsequent to August 24, 1972.

Mr. Candy: Yes, it did.

Mr. Shibley: And in fact that ~~is~~ issue continued to be
of vital concern well into November of 1972.

Mr. Candy: Yes, when the final document, the final formula
was arrived at, ~~there~~ it was quite an issue right up to that
point.

Mr. Shibley: Yes. I can't put my finger on the exact
date, but it was ...

Mr. Genest: September 21?

Mr. Shibley: No, November. ~~There~~ There is a document in
November of 1972 which remits the letter agreement respecting
the formula for the \$34. Mr. Genest, you may be able to help me,
but for the moment, Mr. Candy, I take it that this continued to
be an outstanding issue even after November 1, when some of
the documents were completed, the main documents.

Mr. Candy: That is correct. It was a strong issue.
There is no doubt about it.

Mr. Shibley: And it was a crucial issue because, according
as there was an interpretation of the basis of costing the
building, Hydro was going to realize a possible abatement of
rent and also the limit of the amount which Mr. Moog could
fund against the security of the building was governed by
that ~~def~~ definition. Is that right?

Mr. Candy: Yes.

Mr. Shibley: So this was perhaps one ~~ex~~ of the very key
provisions of the agreement that was under negotiation. Is
that correct?

Sept. 12/73
10:55-11:00 am
PLG

Mr. Tambllyn: That is correct.

Mr. Shibley: And did you, with Mr. McCallum, confront Mr. Moog with the fact that what he ~~was~~ was contending for did not accord with what he had agreed to when he had had discussions with you pre-July 19, 1972?

Mr. Candy: Well, I can't recall ~~the~~ what words we may have used in that, but we were certainly very disturbed at this change, and we tried very hard. ~~the~~ Mr. McCallum pointed out to the Commission ~~that~~ ^{that} we had tried very hard to change this. Canada Square would not agree to ~~the~~ ^{the} change, and so ~~we had to~~ in the final analysis we submitted this to the Commission on the basis that this was the best we could do, and it was at that time...

Mr. Shibley: ~~Yes, I am sorry.~~ Yes, I am sorry.

Mr. Candy: And it was at that time that Mr. McCallum pointed out to the Commission, pointing a finger at me, saying that "the responsibility to ~~insure~~ ^{ensure} that we get a \$34 building is up to Ken Candy," and that is where I decided ~~then~~ to employ Hanscomb Roy. X

Mr. Shibley: You had some concern to have back-up support in this area.

Mr. Candy: That's right.

Mr. Shibley: Now the other thing that was compounding your concern was that although it was part of Mr. Houser's draft agreement that all invoices, sub-contracts and costs of the Canada Square organization be made available to the appraiser, in fact they did not agree to the inclusion of any such provision in the agreement. Is that not so?

Mr. Candy: Yes.

Mr. Shibley: And so you now had the combination of a change of the understanding as to the elements that enter into costs, combined with the circumstance that Mr. Moog was refusing, as part of the agreement, to provide you with ~~his~~ let's say, ~~his~~ tender documents ~~to~~ to the subtrades, his invoices, etc.

(Mr. Shibley)

Is that right?

Mr. Candy: Yes.

Mr. Shibley: Did you ask him for that ~~as~~ as part of it?

Well, we know you did because it ~~was~~ was one of the ~~draft~~ draft documents.

Tape H 2385 follows

Sept. 12/73
11.00 to 11.05 am
DT

~~(Mr. Shibley)~~

~~did you ask him for that as part of -- well, we know you did because~~
~~it was part of one of the draft documents.~~

Mr. Candy: Yes, we bargained pretty heavily back *and forth* --

Mr. Shibley: You bargained again, very heavily. Well, Mr. Candy, having regard for the importance of the costing of the building and the translation from the definition of cost that you had agreed to with Mr. Moog into the terminology which found its way into the agreement, namely appraised value, the definition of which Mr. Genest may now require you to go to the Supreme Court of Canada.

Mr. Genest: Mr. Shibley, please let me set that aside. That was a very facetious comment, *I think was* --

Mr. Shibley: Oh, I see.

Mr. Genest: -- ^{my}unfortunate on ~~part~~. Don't forget -- and I hope the committee won't forget and the press won't forget ^{we have} before Mr. Moog can get his permanent financing, ~~he has~~ got to sign a lease and I don't think that there's going to be any litigations ⁱⁿ at the Supreme Court of Canada ^a because if we don't get what we want, we are not going to sign a lease and he is going to be on the hook to his ^{bank} ~~for~~ for \$40 million with no mortgage to pay it off.

Mr. Shibley: Well, and you won't have the building.

Mr. Finlayson: Well, it won't be much ^{good} ~~use~~ to us,

I'll tell you, *that!*

Mr. Shibley: Well, Mr. Candy, just getting back, what's bothering -- what may bother this committee is the situation that confronted Hydro in October of 1972, and ^{even} into November of '72, when you were down to definining the rights and obligations of Canada Square and Hydro. Here is Mr. Moog saying -- "Oh, no, what we talked about in terms of cost away back when is not what I am ~~going~~ going to agree to, and you have asked for all my particulars of cost and I am not prepared to provide them." Did that not cause you considerable concern?

Mr. Candy: Well, to be honest about that, in retaining Hanscomb Roy, my intention was and is at the completion of this job that we will come up with cost. We are still talking cost. Now, Mr. McCallum and I were conscious, of course, that escalation was taking place. At the same time, this is no excuse for not -- you know, demanding cost.

Sept. 12/73
11.00 to 11.05 am
DT

(Mr. Candy)

We are keeping it on the basis of cost. All the way through, we are ~~getting~~ finished drawings from Canada Square and specifications and Hanscomb Roy will come up in the end with a figure which, in their opinion, is accurate cost of this building.

Mr. Shibley: Mr. ~~M~~Candy, Mr. Tamblyn yesterday indicated that we might save ourselves hours of agonizing over this if Canada Square would simply produce to us the tendered amount for the mechanical installation.

Mr. Candy: That is correct. That would certainly simplify the ~~problem~~.

Mr. Shibley: Yes, and if, in a similar way, Canada Square were willing to produce its costs of all of the sub-contracts, which I understand ^{we already} are working out on around \$17 or more, that that kind of information, if available, would ^{with} precision, rather than ~~with~~ on a basis of estimates, enable Hydro to cost this building.

Mr. Candy: That's correct.

Mr. Shibley: Yes, and you are not going to be afforded that under the terms of the contract. Is that right?

Mr. Candy: That is right, under the terms of the contract.

Mr. Shibley: And you are not going to be afforded that voluntarily by Mr. Moog.

Mr. Candy: That's right.

Mr. Shibley: So --

Mr. Genest: Mr. Shibley --

Mr. Shibley: Yes?

Mr. Genest: You really cut off Mr. Candy in the middle of an answer to another question.

Mr. Shibley: I will come back to Hanscomb Roy. Don't worry about that.

Mr. Genest: No, but he was explaining to you what McCallum and he were doing --

Mr. Shibley: I'm sorry.

Mr. Genest: ~~and it was~~ in response to one of your questions.

Mr. Shibley: I'm sorry.

Mr. Genest: I have forgotten the question, but I was

Sept. 12/73
11.00 to 11.05 am
DT

(Mr. Genest)

interested in his reply and it just got cut off.

Mr. Shibley: Well, I think it has to do with Hanscomb Roy and I will come back to that in a moment, because I think I know what's on his mind. But at the moment what I think the committee would like to understand is why, at a time when Hydro could still have said to Mr. Moog, "Well, you are either going to live up to the arrangement you made with Candy and produce your costs or there's not going to be any deal."

(H-2386 to follow)

September 12, 1973
11:05 - 11:10 a.m.
B.G.

(Mr. Shibley)

~~Why did you go forward with the transaction?~~ Why did you go forward with the transaction?

Mr. Candy: I think on that - this was really the only point in contention; the obvious way for anybody at the completion of a job, if we come up with a figure, for instance, which is below \$34., there is only one way for Canada Square to prove it, that it's wrong or right. I mean if they think it's wrong, there is only one way to prove it, and that is to produce the documents.

Mr. Shibley: Yes, unless they are also claiming for such, well, you see, that's not the way ~~it~~ it's going to happen. According to how I understand the evidence, Mr. Moog kept saying, "We will just leave that up to the appraiser," ~~and~~ whatever elements he is going to permit himself to be affected by in terms of appraising the building, that's going to govern so far as he is concerned. He is not going to have any regard for the costing that Hanscomb Roy may come up with or that you might come up with on the basis of your thinking. And that is disturbing. ^{me} I think Mr. McCallum ~~was~~ recognized this as a ^{the} problem, did he not, at the time/negotiations were continuing?

Mr. Candy: Oh yes, we realized it was a problem.

Mr. Shibley: And did he raise that as a serious matter with the members of the Commission?

Mr. Candy: Yes, it was seriously pointed out to the Commission that this was a problem that we couldn't solve, and it was left to the Commission to make a decision ~~and~~ we didn't recommend one way or the other; we just merely presented the facts.

Mr. Shibley: You didn't ~~recommend~~ ^{recommend} one way or the other, let's get the record straight on that, because Mr. Genest, I think was concerned about it in making his opening statement to-day. At the Commission meeting, are you saying that the problem was outlined by yourself and Mr. McCallum, this is the meeting of November 1st I believe, is that correct?

Mr. Candy: Yes.

September 12, 1973
11:05 - 11:10 a.m.
B.G.

Mr. Shibley: That the problem, and this is a serious problem, was outlined, but neither you nor Mr. McCallum made any recommendation one way or the other.

Mr. Candy: Let's go back to the one meeting before that.

Mr. Shibley: All right.

Mr. Candy: We went to the Commission and we presented the problems we had then and we pointed out some other areas of difficulty. One was the question of participation in the ground floor rental and ~~the~~ wear and tear, and the overhangs and so on, and the Commission then disagreed and sent us back to renegotiate these items with Canada Square.

Mr. Shibley: Right.

Mr. Candy: We went back and we renegotiated everything to the satisfaction of the Commission and it still just left us one item.

Mr. Shibley: Yes.

Mr. Candy: And this one item - ~~it was~~ we presented the facts and we said this is the best we can do, this is the best we can get.

Mr. Shibley: Yes.

Mr. Candy: And on that basis the Commission agreed and accepted the contract. Now, I think that, well, do you want to get into Hanscomb Roy and *deal with Hanscomb Roy?*

Mr. Shibley: Well, ~~I don't~~ believe me, I'll ~~see~~ come back, I've got a note to ask ^{you} about that.

Mr. Candy: All right.

Mr. Shibley: But, I just want the committee to understand the situation now. You appreciated at that time and did the ~~Commission~~ Commissioners appreciate that in a transaction such as this, a great deal turns upon the good faith and co-operation that must exist between the developer and the owner?

Mr. Candy: That's right.

Mr. ~~Shibley~~ Shibley: And here the Commission was confronted with a circumstance of the developer having ~~been~~ reneged on the

H-2386-3

September 12, 1987
11:05 - 11:10 a.m.
B.G.

(Mr. Shibley)

original arrangement he had with you as to cost, and in respect of the subsequent computation of appraised value, was refusing to produce his documents in that respect to you. Now, did this not give you cause for pause and the Commissioners cause to pause and say, "Is this a contractor with whom we want to deal?"

Mr. Candy: Well, I think probably what ~~the~~ gave the Commission some comfort in this thing ~~is the fact that we were~~
~~sure.~~

X (Tape H-2387 follows)

Sept. 11/73
 1110 11:15 am
 C.B.

Mr. Candy

(Mr. Candy) ~~over the commission some comfort in this thing~~

was the fact that we would make sure that we got a \$34 building. Sure, this gets back to this estimating, but one thing I'd like to point out here, and as I said in my previous evidence, ~~if~~ we felt that the cost of this building was not coming up to \$34, we have certain things in that agreement which we said that we would pay for. Now we would inject these things into the contract, and the purpose in doing this is that the mortgage is at eight per cent and we were all talking about eight per cent money at that time. The mortgage is at eight percent, we realized that interest rates were going up. The cost of a \$1 million on that contract is about seven ~~1~~ cents a square foot in rent.

If you ~~will~~ take ~~1.3 million~~ square feet at seven cents you've got about \$84,000 a year. If we have to put up \$1 million, the chances of us borrowing that \$1 million at eight per cent ~~will~~ probably be very slight. It may be nine or nine and one-half. If we can put that in on the mortgage at eight per cent, which is \$80,000 a year, then it is a write-off as far as ~~that~~ that is, it is more advantageous for us to use the eight per cent money of the mortgage to buy these things which we may have to go out and buy at nine or nine and one-half, and the saving in rent under the formula is pretty much the same thing. For instance, eight and one-half per cent is the same as seven cents a square foot.

Mr. Shibley: Mr. Candy, I don't want to get distracted from the topic I was on, and if you will just bear with me for a moment. I want to come back, though, to the question that I put to you, namely that you ~~were~~ ^{were} confronted now, therefore, with a commitment that allowed the developer \$34 a square foot, and you knew from three other proposals that that was on the high

Sept. 11/73
11:10-11:5 am
C.B.

(Mr. Shibley)

side of it—actually it was the very highest of all four figures in terms of their price per square foot for the building.

Now you had your reasons, you say, for accepting that. But you knew that relative to three other submissions, one had come in as low as \$28 and ~~and~~ I think there were two at \$30 and another one—Canada Square's at \$34. Now you've got a situation where you are dealing with really the developer who has put in the highest per-square-foot costing for the building, \$45 million, and you're dealing with a developer who has changed the arrangement as to what is to be the elements of costing. You're dealing with a developer who is refusing to produce his cost figures, and you say now, I gather, that your only protection in these combined circumstances is to make sure that you can build enough into the building to get your money's worth. Is that right? Is that the basic position that Hydro is in right now? That you ~~must now~~ you are left in a position where you must make sure that enough is built into this building to get your money's worth.

Mr. Candy: Yes, I don't want that to be looked upon as "gilding the lily" of the building.

Mr. Shibley: No, I understand that. Now then you go to the next step and you say, ~~and~~ and we did that by what is paragraph eight of the contract, that says you are entitled to make certain changes.

Mr. Candy: Yes.

Mr. Shibley: That's what you are relying on. Do you appreciate that that paragraph is limited to changes that do not materially vary from the specifications that form part of that contract? Did you understand that?

Mr. Candy: Yes, I understand that.

Mr. Shibley: Well, Mr. Candy, if you understood it, how is it that when you went to Hanscomb Roy after they came out with their ~~xxxxxx~~

Sept. 11/73

11:10-11:15 am

C. B.

(Mr. Shibley)

first report of April 25th, wherein they put a valuation on the building of \$33 million, including a \$3 million contingency allowance;

land.

H 2388 to follow

H-2388-1

(Mr. Shibley)

~~that~~ that was far lower than \$34 a square foot on any computation, ~~you~~ you went to them and you said to them: "You are to include the carpeting at \$1.3 million." Right? Or whatever is the —

Mr. Candy: Well, there is a little more to it than that.

Mr. Shibley: Well wait. You did tell them that, didn't you?

Mr. Candy: Yes.

Mr. Shibley: You also told them to include full sprinklering.

Mr. Candy: That is right.

Mr. Shibley: At an additional one-half million dollars. You gave them items totalling just under \$2 million ~~dollars~~ that you thought, under paragraph 8, you could swing into that \$34 computation. Is that so?

Mr. Candy: That's ~~say~~ right.

Mr. Shibley: And you were very quickly disabused of that belief by Canada Square who said: "Oh no, you can't transfer carpeting into that cost of Canada Square, neither are you entitled to have the building fully sprinklered at our cost." They made that clear to you?

Mr. Candy: Yes.

Mr. Shibley: And that's acceded to by Hanscomb Roy?

Mr. Candy: Yes, that's right, based on —

Mr. Shibley: And the reason it's acceded to is that the preliminary specifications do govern, the ones that are part of the contract do govern, at least to the extent that you are not entitled to materially vary from those specifications without incurring an extra charge from Canada Square — isn't that so?

Mr. Candy: Well, to be fair, I think, the specifications that we have, and the sketch drawings that form part of the agreement leave a lot to be desired as far as defining the complete building. There are a lot of areas in that which this must vary —

Sept. 11/73
11:15 - 11:20 am
JLPMr.*that,*Mr. Shibley: I realize ^{that,} Mr. Candy.

Mr. Candy: And I had enough faith in Canada Square to know that we would get these concessions; they would add these things; and my experience with Canada Square ^{and} not because of this inquiry, even prior to the inquiry ^{and} was that their cooperation in that area has certainly not been difficult.

Mr. Shibley: Well, Mr. Candy, just on that point, what is disturbing to me is how you could, without prior dealing, in the sense of actually being on a job with Canada Square, how you could have a sense of reliance upon them ^{in the face of} Mr. Moog having reneged on his agreement with you as to the elements to enter into the costing of the building. How could you have that feeling at the crucial time of November 1 when this contract was being entered into?

Mr. Candy: Well, this question of value and cost —

Mr. Shibley: ^{No,} answer my question please.

Mr. Genest: He is trying to, Mr. Shibley, why don't you let him?

Mr. Shibley: How could you have a sense of confidence in someone who had first reneged on the deal he had made with you, and secondly was telling you flat out, as he has been telling this committee: "I'm not going to produce my costs." Now, wouldn't that shake your confidence somewhat?

Mr. Candy: Yes, I was ~~disappointed~~ disappointed at that, ~~but~~ there's no doubt about it.

Mr. Shibley: And it caused you sufficient concern to get Hanscomb Roy involved.

Mr. Candy: That's right.

Mr. Shibley: But what's bothering me is you keep saying: "Well, even if the specifications, preliminary specifications, do limit, I have enough confidence in Canada Square that they're going to be flexible." Now, they weren't flexible on the sprinkler system, were they?

Mr. Candy: No, ~~No~~.

Mr. Shibley: And that's going to cost Hydro an extra half a million dollars over and above the contract price.

Mr. Candy: That is right.,

Mr. Shibley: And in respect of any other items of change, you are going to be confronted with those preliminary specifications as to whether they materially vary from them. Isn't that so?

Mr. Candy: Yes.

Mr. Shibley, Chairman: Candy, ~~Shibley~~, you are trying to give reasons for your ~~lack~~ continuing confidence, or some degree of continuing confidence. Do you want to enlarge on that?

Mr. Candy: Well, with Canada Square, many of the things that had been added to the building, in all fairness to them, many of these things ^{have} been suggested by Mr. Moog himself, on things which we did not request, which are costing more money.

I realize that this was a problem that did disappoint me, and believe me I have argued with Mr. Moog pretty strongly on that point myself.

Mr. Shibley: Sure you did.

Mr. Candy: And I was rather disappointed that I couldn't sell that point. I would like to have been able to ~~sell~~ settle that thing. But, on the other side of the coin, there were a lot of other advantages to this, and a lot of ~~concessions~~

(Tape H-2389 follows)

September 11, 1973
11:20 - 11:25 P.m.
D.L.

(Mr. Candy)

~~There are a lot of other advantages to this and a lot of~~
concessions which I felt we would get. You may say if
you ~~didn't~~ didn't get this one why would you get others.
I think this was sort of a major point with him in ~~de~~^vulging
in opening his books. I don't know really what the reason
is why he wouldn't open the books. I think personally
if I come up with a figure no matter what figure we come
up with in the end, that it's going to resort to opening
the books in any event because if he is going to prove something
there is only one way to prove it. And I have no reason to
think any less of Canada Square now than I did before, based
on their performance, other than this particular item and I
have since, you know not too long ago, talked to him again
about this thing.

Mr. Shibley: Well Mr. Candy I remind you of the
evidence of Mr. Rasmussen of Hanscomb Roy ~~who~~

Mr. Candy: Yes

Mr. Shibley: Who mentioned that at a meeting on May 17
of this year with Canada Square he, after half an hour, got up
and walked out in disgust because of the lack of cooperation
he was getting. Do you remember that?

Mr. Candy: Yes

Mr. Shibley: And do you remember that you had to get
involved yourself in that respect. Is that right?

Mr. Candy: That's right.

Mr. Shibley: You had to intercede and call Mr. Moog and
say, look get ~~your~~^{your} people to cooperate. And it was thereafter
that they gave ~~me~~ Hanscomb Roy some of the information that they
required. Is that right?

September 11, 1973
11:20 - 11:25 P.m.
D.L.

Mr. Candy: That's right.

Mr. Shibley: So how can you say, Mr. Candy, that other than this instance back in the fall of 1972 when the contract was under negotiation, you haven't recognized some incident that would cause you to question your ability, over the next three years while this building is under construction for two years, two of the three years, that you're going to get the kind of cooperation you're talking about.

Mr. Candy: Well I think probably because I have achieved the cooperation in every other area. This is the one main point that we have not, and ~~we're talking about~~ we're talking about the actual time that this took place. In light of what's going on today I don't think it's a problem but that's beside the point as far as the Committee are concerned, I realize that. I don't think there is any doubt about it, of course now, that the building will pass that at least. But I don't know it's pretty uh. I have had so much cooperation from Canada Square in other areas in this thing and if I want something or suggest something, getting it, other than this particular thing, has ~~been~~ really been no problem.

Mr. Shibley: Mr. Candy, I take you back again to what is an anomaly of the arrangement, namely that whereas three developers have said the building could be built for materially less, because you have entered into an arrangement with Canada Square to have the building built at substantially more money, Hydro is put in a position of only being able to get its ~~money~~ money's worth if it gets enough items, so to speak, built into the building, additional items. Is that right?

September 11, 1973
11:20 - 11:25 P.m.
D.L.

Mr. Candy: That's right and we're entitled to do that actually.

Mr. Shibley: Well within the limits of those preliminary specifications that are part of the contract.

Mr. Candy: Yes but there is, if you look at the specifications and at the drawings that were signed as part of that, there is quite a scope in there. I'm not trying to belittle your point. I know what you're trying to make and I certainly, yes, am disappointed that we could not solve that problem and I think ~~that~~ Mr. MacBeth mentioned one time before, I remember sitting back there, that you know, how do you have confidence in Canada Square, you know, when you didn't achieve that point and I guess that probably any developer you went with, there would be some points you couldn't solve. But I realize it's a point and it's a sore point and it's something that we really worked at and it's something that ^{I've} got to admit I worked

H-2390-1

(Mr. Candy)

~~probably any developer you want with there would be some point you~~
~~couldn't settle, but I realize it is a point, and it is a sore point,~~
~~and it is something that we really worked at, and it is something~~
~~that I have got to admit I worked at since this inquiry started.~~

Mr. Shibley: Well, I'm sure it was a very important point, Mr. Candy. Did the commissioners at the meeting of November 1 fully comprehend how important it was? Did they understand how important it was? What I have in mind when I ask you that ^{id} did they realize that with the limitations upon you as to the definition of appraised value, with the limitations upon you as to getting cost figures from Mr. Moog, that ~~Mr. Moog said~~ there was a contingency built into the arrangement that he could build a building at a cost of less than \$45 million, but get an appraised value for the building of \$45 million, upon which basis he could pocket the difference in financing, and on which basis he could also refuse Hydro any abatement of rent. Was the importance of this term ^{in fact} in fact, I can hardly think of any term that is as important other than the rental rate itself.

Mr. Candy: That's right.

Mr. Shibley: Now was that driven home to the commissioners at the meeting of November 1?

Mr. Candy: Well, I would say that was very ~~strong~~ thoroughly explained my Mr. McCallum to the commission, and when Mr. McCallum brought this up initially, when he was first retained by us, and the reason I went to Mr. Moog ~~anytime~~ on July 18 to discuss this situation was to get an upset price to prevent having him take money off the top end.

Mr. Shibley: Now, I want to talk to you about that meeting of ^{July} ~~November~~ 18. I want to produce to you exhibit 211 which is a memorandum of Mr. Moog to his own file. And the memorandum starts ^{off} ~~at~~:

"Meeting held today between K.H. Candy of Hydro and G.W. Moog with W.C. Coles also ~~present~~ present."

Now in terms of people participating, the memo is correct is it? Did anyone else sit in?

F-2390-2

Mr. Candy: No, not that I know of.

Mr. Shibley: And Mr. Coles was there?

Mr. Candy: Yes. And I have asked Mr. Coles; he said he was there part of the time, he is not sure he was there all of the time.

Mr. Shibley: It starts ^{off}:

"Prices by others regarding annual expenses, excepting business and realty taxes, range from \$1.25 - \$1.40 per sq. ft. Candy allows \$1.45 per sq. ft. per annum for such expenses - C.S. proposal." That is Canada Square proposal. Did you discuss with him the range of operating expenses as contained in the proposal of the ^{ot} other developers?

Mr. Candy: I ^{have} never disclosed to any ~~competitor~~ competitor anybody else's prices. When this thing surfaced the other day and I was sitting back there, ~~and~~ I started to think, ~~and~~ "What was that meeting all about?" ~~I~~ I couldn't recall the meeting, and I looked at my memorandum of June 23 to the commission and I went through that, and I looked up my notes which I took to the commission to talk to them, and I found that the difference in the two was the \$34. ~~and then~~ Mr. McCallum came up with his evidence and he had a record in ~~there~~ there of my reporting back to him on July 18 of what I had discussed, so that is when that came back to me. The thing that confuses me ^{the} in \$1.45 is that on March ~~30~~ 30 I have a memorandum which was in reply to a request from Frank Mink to get additional information, and I went to Mr. Moog to find out what his operating cost was, and that is when he gave me \$1.45, and that is in the June 10 report. So I just can't understand why I would be agreeing to anything at that point, or why we would be talking about it. This just ^{leaves} ~~leaves~~ me, I have no idea.

Mr. Shibley: Well, let's deal with one part at a time, Mr. Candy. You know that the range of operating costs, propounded by the other developers ~~or~~ calculated it may be by you for the other developers, I am not sure which ~~was~~ was actually a range of \$1.23 to \$1.40.

Mr. Candy: Yes, I realize that.

Mr. Shibley: So it accords very closely with the information which appears in Mr. Moog's memo.

H-2390-1

Mr. Candy: That's right. That is correct.

Mr. Shibley: Now that was information confidential to Hydro
as of July 18.

Mr. Candy: That's right.

Mr. Shibley: Now, have you any explanation as to how Mr. Mc
~~could proceed with such information~~

H-2391-1 follows

H-2391-1

(Mr. Shibley)

as to how Mr. Moog could record with such precision information as to the range of operating costs contained in the proposals of the other developers?

Mr. Candy: The only thing that I could I really don't have but the only thing that I could suggest, and this is a guess and I realize it is dangerous to guess, but — and it is just a possibility, I am not saying I did this or not, but it is a possibility ^{and} I don't know why I would say it at that meeting for the reasons I have previously stated, but I may have said at that time that ^{the} going rate seems to be between \$1.25 and 1.40⁰⁰, but I have no reason for knowing why I would say it or why we would be even discussing it, and why I would be agreeing to it.

Mr. Shibley: Mr. Candy, your guess is a bad one because the wording is "prices by others", regarding annual expenses.

Mr. Candy: Yes, I realize that, but I have no idea because I have not told Mr. Moog or anybody else those ~~the~~ prices.

Mr. Shibley: I see. So, however he discovered that information, it wasn't through you.

Mr. Candy: No, sir.

Mr. Shibley: But it does accord with what was within the Hydro documents, the submissions of the other developers.

Mr. Candy: That's right. They were \$1.23 to \$1.40.

Mr. Shibley: And then it goes on to say, "Candy allows \$1.45 per square foot per annum for such expenses, ~~and also for the~~ C.S. Proposal". You say you never did agree with him in that respect on July 18th?

Mr. Candy: No, because I had no ~~of~~ reason to agree. This had already been established.

Mr. Shibley: I see. Well, I am wondering whether it was in the context of a conversation, "Look, the other fellows have all got proposals in for operating costs, for maintenance, ranging from

Sept. 12/73
11.30-11.35 a.m.
B.A.

(Mr. Shibley)

\$1.25 to \$1.40⁷⁷. You are high at \$1.45 but I will go along with it anyway.

Mr. Candy: No, I have never said that. I have just accepted that price, and it is in the June 10th report which the Commissioners had, the Chairman had, I can't understand any reason for me saying I agree or even discussing it.

Mr. Shibley: No, well that is the point. Aside from a reason for you, I want to know if you had that kind of a discussion with Mr. Moog on July 18th?

Mr. Candy: I would say, no, I don't recall that at all.

Mr. Shibley: I see. And then the memorandum goes on and says, "Realty and business taxes he figures also at ~~\$1.25~~ \$1.45. Further calculates additional expenditures, for instance broadloom, etc, ~~to~~ to amount to a total of 55 cents a square foot, ⁱⁿ addition to the realty and business tax, bringing the total up to \$2.00 per square foot." Now, with respect to the broadloom, is that a reference to the fact that broadloom was for the account of Hydro?

Mr. Candy: Yes, I think so.

Mr. Shibley: So you understood with him as early as July 18 that that was so.

Mr. Candy: Oh, yes.

Mr. Shibley: Then, Mr. Candy, if you understood that, and I ~~must~~ say it got projected into the formal documents that carpeting was explicitly for the account of Hydro...

Mr. Candy: That's right.

Mr. Shibley: How could you have gone to Hanscomb Roy after you got their \$33 million evaluation of the building, and suggested to them that you were entitled to include carpeting at a cost of, I think, \$1.3 million.

Mr. Candy: For the reasons that I have stated that we were aiming to get a \$34 building and....

Mr. Shibley: I am talking about your right to do that, Mr. Candy. I know you were aiming to get the cost up.

Sept. 12/73
11.30-11.35a.m.
B.A.

Mr. Candy: Yes, but -- well no, we were on the basis of trying to get our \$34 worth and ~~of~~ putting that money into the mortgage instead of borrowing the ~~the~~ money ourselves.

Mr. Shibley: I understand. You were trying to get your money's worth...

Mr. Candy: That's right.

Mr. Shibley:... but you knew from July 18 discussion and from the contract itself that ~~of~~ you were not entitled to carpeting, not unless Mr. Moog volunteered to agree, as he did with some other items.

Mr. Genest: Mr. Shibley, I think you are missing the point.

Mr. Shibley: Am I? All right, tell me.

Mr. ~~Genest~~ Genest: The point is, it is not at no cost to Hydro. What I think Mr. Candy is saying is, ~~that~~ ^{"If} your building, Mr. Moog, is less than \$34 a square foot, instead of giving us a rent reduction, throw in the carpets, finance the carpets for us. We will pay you the high rent even though it should be less than \$4.92." Do you follow me?

Mr. Shibley: No, I don't ^{3/}agree with that, though, because in the Hanscomb Roy ~~the~~ report number two, which was a first version of May 17....

Mr. Genest: ~~They didn't~~ ^{That's it. You'd have to take} _(them off.)

Mr. Shibley: They didn't adopt that approach at ~~the~~ all and Mr. Moog didn't accept that approach at all; he had them take it off because they were incorporating it into the ~~basic~~ basic \$34.00 figure.

Mr. Genest: I appreciate that, I am just saying that I appreciate your point but I think that is what Mr. Candy is telling you.

Mr. Shibley: I see.

Mr. Deans: Could I ask one question? I just don't quite understand how you can say that that is a desirable aspect of it. Surely you wouldn't normally finance a carpet over 30 years.

Sept.12/73
11.30-11.35a.m.
B.A.

Mr. Candy: No, well....

Mr. Deans: Surely you wouldn't. You know, this is the point. So you get it for eight per cent, but you are going to pay it for 30 years.

~~Mr. Candy: You have to borrow the money to buy carpet.~~

~~Mr. Deans: Oh, yes, but you are certainly not going to borrow it for 30 years to pay for a carpet.~~

(H-2392 follows)

H - 2392 - 1

(Mr. Deans)

~~into the fact that he had agreed to borrow the money to buy a carpet.~~
~~He had agreed to borrow the money to buy a carpet.~~
Mr. Genest: ~~He~~ have to borrow the money to buy ~~a carpet.~~

~~carpet.~~
Mr. Deans: Oh, yes, but you are certainly not going to borrow the money for 30 years to pay for a carpet, surely?

Mr. Candy: We would like to borrow any money we can at eight per cent for 30 years if we could do it, we would love to.

Mr. Shibley: If I may go on, Mr. Candy, with the document. In the third paragraph:

"He has agreed that \$34 a square foot calculations shall be based on net usable square footage of office space rather than gross rentable area," and then there is something after that, But just stopping there, obviously you discussed this \$34 figure with him that day?

Mr. Candy: I want to be perfectly clear on this. I never at any time considered the \$34 to be based on anything but gross area.

Mr. Shibley: All right.

Mr. Candy: Now if I had done this I would have mentioned this in our negotiation to Mr. McCallum, and it has never come up, I have never assumed \$34 was ever anything but gross area. That ~~was~~ wishful thinking on the part of Mr. Moog.

Mr. Shibley: Yes, because his wishful thinking found its way into an attempted formula ^{net usable} net usable and that was rejected by Mr. McCallum.

Mr. Candy: That's right.

Mr. Shibley: But that is what is bothering me about the clause. It says that you agreed that the calculation would be based on ~~that~~ ^{net} usable square footage.

Mr. Candy: That is absolutely false. I don't know what he is thinking about. I certainly would never agree to a

H - 2392 - 2

(Mr. Candy)

thing like that. It has never entered my mind at any time that it would be based on anything. As a matter of fact, when Mr. Tatham was here and he started talking about rent related to useable office space that is about the first time I heard that. I mean I am accustomed to building buildings and costing buildings, and it's always on that gross area.

Mr. Shibley: Well, Mr. McCallum surely took up with you this problem when he was confronted with a formula based on net useable feet, did he not? Mr. Moog's solicitor submitted a formula based on net useable rather than gross feet, which was going to work ~~-----~~

Mr. Candy: I can't recall whether he took it up with me or not but if he did I would just dismiss it in a minute.

Mr. Shibley: In any ~~event~~ event you say it is false that Mr. Moog records in this memorandum that you agreed that the \$34 per square foot calculation be based on a net useable square foot --

Mr. Candy: That is entirely wishful thinking. If he thinks ~~me~~ I agreed to that, I certainly didn't understand what he was talking about.

Mr. Shibley: This is a material difference, isn't it, Mr. Candy?

Mr. Candy: Sure it is.

Mr. Shibley: Because you would be dividing into the \$45 million say 1.2 million instead of 1.3 million, to come up with your \$34?

Mr. Candy: That's right.

Mr. Shibley: And the lower the ~~factor~~ *effectiveness factor* --

Mr. Candy: Oh yes, I can see your concern and I can understand what he is trying to do.

Mr. Shibley: Well, my present concern also is that Mr. Moog purports to record in this memorandum your agreement to that effect.

H - 2392 - 3

Mr. Candy: I see that but ~~-----~~

Mr. Shibley: Did he ever confront you with your having agreed to that later on?

Mr. Candy: No. I had never seen this, I had never heard about it, and he hasn't discussed it with me.

Mr. Shibley: All right, then I'll skip the next paragraph and then the next one after that:

"It was agreed that we iron out the \$34 per square foot question in principle, as per the attached draft, but we would not finalize the language at this moment to avoid questioning by the Commission in tomorrow's meeting".

Now if you look at the next page, which I gather to be the draft to which reference is made, it says:

"The Hydro chief architect, K. H. Candy, can ask the building architect, K. R. Cooper, to state the total cost and value of the buildings net usable office square footage with all other building areas included upon completion. Should same be below \$34, a proportionate reduction of rent should be granted to Hydro".

Now, firstly, Mr. Candy, did you see this draft at the time of your meeting on the 18th?

Mr. Candy: No, I have never seen it.

Mr. Shibley: You never did see it? Because it also incorporates the words "net usable". You see that?

Mr. Candy: Yes

Mr. Shibley: So that so far as you are concerned that draft was not before you at the meeting of the 18th?

Mr. Candy: No.

Mr. Shibley: It says, "It was agreed that we iron out the \$34 per square foot question in principle as per the draft". Did you enter into any such agreement with Mr. Moog on July 18th?

Mr. Candy: No, definitely not.

Mr. Shibley: And it goes on to say: "But we would not


Sept. 12, 1973
11.35-11.40 a.m.
M.F.

H - 2392 - 4

(Mr. Shibley)

finalkize the language at this moment to avoid questioning by the Commission in tomorrow's meeting"? Now is that a true statement?

Mr. Candy: No, I would like to say something about that. I saw - after this thing surfaced there was some wording in the press at higher than normal lettering height which I noticed which -----



Tape H - 2393 follows

Sep. 12, 1973
11.40-11.45 am
V.H.

(Mr. Candy)

~~there were some working in the press at higher than normal~~
~~150,000 per hour, which I told the which I indicated that Moog~~
and Candy had some kind of a private deal and also that
Candy attempted to ^{either} fool or deceive the Commission. I want
to say definitely now that Moog and Candy never had, have
not, and will not have, any private deals and Candy has never
attempted to fool or deceive the Commission. My loyalty is
to Ontario Hydro first and it's always been there. Now that
is absolutely false. I have gone to the Commission and I
have told the Commission the facts openly and I have ^{had} nothing
to hide. I am not protecting any deals and I am not making
any deals and I never have made any deals. I want the press
to understand that too. That is an absolute fact.

Mr. Shibley: Now, Mr. Candy, ^{accepting} ~~accepting~~ your
statement that much of the content of this document is false,
including that last paragraph which is highly material in
terms of your own personal integrity, how can you say, having
now seen the production of this memorandum, that you do not
have additional ^{cause cause} ~~cause cause~~ additional to the concern you
had in November 1972, as to the good faith of Mr. Moog, which
is heavily relied upon in terms of the arrangement that has
been entered into between Hydro and Canada Square?

Mr. Genest: Mr. Shibley, I really don't think
that is a fair question.

Mr. Shibley: Well, I do. I'll ask for a ruling, if necessary.

Mr. Genest: ^{I think} ~~And you~~ it's a question very much ^{that} ~~of~~ should
concern ~~the~~ the committee, but I think to ask a witness to pass
judgment now on evidence that has come before, which is a
judgment essentially for the committee to make ~~....~~

Mr. Chairman: Gentlemen, you have caught me red-
faced, ^{in that} I didn't hear the question. I was talking to Mr.
Walker. It's ^{my} ~~my~~ fault, I should have been paying attention.

Mr. Genest: I just put that ~~....~~

Mr. Shibley: Well, I will recap it.

Mr. Chairman: What I would like to do anyway is take a break. I think we have given Mr. Candy here quite a time, ~~in the chair~~, so if we can take a break for ten minutes.

~~XX~~

The committee recessed briefly at 11.42 o'clock, am.

H-2394 follow

September 12th, 1973

11.56 - 12 noon

2394 - 1

AA

(Mr. Chairman)

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order.

Mr. Shibley: Mr. Candy, I am not going to pursue the question I ~~left~~^{left} with you before the recess in deference to the chairman and I would rather now take you on to exhibit 89, which is a memorandum dated September 21, 1972 that I ask to be produced to you and ~~I believe~~^{a letter} this is, I believe, from you to Mr. McCallum and it again has to do with this question of what you intend, in terms of cost of the building and how that cost^{has} to be established and you say, "The developer has examined your draft of the above agreement."

That would be Mr. Houser's draft of September 15, wherein he did make provision for it to read as a matter of cost and to have the invoices, subcontract documents, etc., all produced as part of the obligation of Canada Square.

And you say here, "The developer has examined your draft of the agreement^{and} ~~and~~ appears to be quite concerned about one particular item, which is the designation of the consulting architects to compile the cost of the building upon completion. He ~~appears~~ appears to be concerned that the obtaining of this information strictly by a bookkeeping operation, would not present the true facts favourable to both parties."

"He discussed this matter with me by telephone and based on this discussion, I would suggest that the following may be a better ~~wording~~^{wording} for the agreement which I have ~~not~~^{NOT} read to him, but which I feel would be acceptable to both the developer and ourselves."

Then you start in quotes "The cost of the building shall be determined by an accurate cost appraisal of the structure upon completion by a qualified cost consultant acceptable to both parties which shall also include design, permits, fees and impost charges necessary for ~~the~~ construction, but excluding items provided by the Commission . . ."

Then you go on, "Special facilities required by commercial

September 12th, 1973

11.56 - 12 noon

2394 - 2

AA

(Mr. Shibley)

tenants of the developer shall not be included . . ."

And then you talk about the cost of the tunnel. And then in the third paragraph on page 2, "In suggesting a qualified cost consultant, I am thinking of Hanscomb Roy Associates who were the cost consultants for the original design and on whose figures we determined the cost of the original design for the purposes of arriving at the architect's fees, which were based on a percentage of the cost of the building.

"The method I am suggesting would, I ~~think~~, produce a true cost, some of which could be obtained directly from the developer and the balance being estimated by quantity surveying ~~etc.~~, at the time of completion. It is not a difficult building to appraise as it is a very repetitive design on the floors above grade ~~and much of the floors below grade such as the~~

2395 - 1 follows



Sep. 12/73
12.00 to 12.05 ~~am~~ pm
fvk

(Mr. Shibley)

~~as it is a very repetitive design on the floors above grade~~
and much of the floors below grade, such ^{as} the finishing of ~~&~~ all
the commercial areas are not included in any event."

Mr. Candy, as of the date of this document, as late
as September 21, it appears that you had in contemplation yet, the
kind of definition of cost that you had in mind from the outset
and, beyond that, ^{that} you would be using Hanscomb ~~and~~ Roy as the
people who would establish, in part at least, the cost. You were
going to get some figures from the developer himself, that would
be his sub-contracts and contracts for material, right?

Mr. Candy: That's right.

Mr. Shibley: And as to anything for which you didn't
have that kind of specific information you'd supplement that
information by Hanscomb ~~and~~ Roy doing appraisal as well. What is
of interest to me, again, ^{is} the date and the concept that you had
in mind respecting this very important provision. Did this
memorandum reflect, first of all, what your thinking was and,
secondly, I notice you say that you discussed it ^{is} that's exhibit
89, September 21 ^{is} you also note that you discussed it with the
developer. I'm taking that to be Mr. Moog?

Mr. Candy: Yes.

Mr. Shibley: And you thought that this formula would
be acceptable to him. Is that correct?

Mr. Candy: I would say it is. I'm sure I wouldn't have
said that if I didn't think that.

Mr. Shibley: I'm sure that's so, Mr. Candy, and what
concerns me then is, do I take it then that even this ~~Formula~~ formula,
as settled by this wording, did not ultimately meet with acceptance
by MR. Moog?

Mr. Candy: I think that's correct.

Mr. Shibley: And he once again changed the position,
so to speak, that you felt would be acceptable to him consequential
upon your telephone conversation on or about September 21?

Mr. Finlayson: Just a minute now. The memo doesn't

Sep. 12/73
12.00 to 12.05 pm
fvk

(Mr. Finlayson)

say that Mr. Moog had agreed to this. It's not a question of Mr. Moog changing ~~his~~ *his position again.*

Mr. Shibley: I didn't say that. I said, "what you felt was acceptable." In your view, was his subsequent position a change from what you believed to be the understanding between you and ~~him~~ *him* as at September 21?

Mr. Candy: Yes, I think the final one gave him more latitude than this did. I was trying to, I suppose, reach some kind of a compromise, but tying in Hanscomb ~~and~~ Roy. I felt, ~~that~~ *and* I had confidence in Hanscomb ~~and~~ Roy *as quantity* ~~and~~ *properly* surveyors, that we would be coming up with a pretty accurate figure on that.

Mr. Shibley: Did he agree to this wording as quoted in this exhibit?

Mr. Candy: I say here, "I haven't read it to him," and I've written this from my conversation with him. ~~and~~ I quite frankly don't recall ^a ~~the~~ conversation but I wouldn't have put it in there if I didn't mean that.

Mr. Shibley: When you say ~~that~~ you wouldn't have put it in there you mean the words: "which I feel would be acceptable to both the developer ~~and~~ and ourselves." You wouldn't have said that unless, from the content -

Mr. Candy: No, I must have felt that way as the result of our conversation that he would agree to that. ~~to~~ I've used the word ~~as~~ you can see, the word "appraisal" entering into this thing now. "An ~~actual~~ accurate cost appraisal of the ~~and~~ structure upon completion of the qualified cost consultant." And we've used the word "cost appraisal" but I've been endeavouring ~~to~~ *to* tie it to Hanscomb ~~and~~ Roy. Their approach, of course, would be a pretty accurate cost.

Mr. Shibley: All right. With respect to what ultimately evolved to be the function of Hanscomb ~~and~~ Roy, do I take it now that they are retained to take off, I think, 10 to 12 estimates. Is that correct? Over the term, is that ~~and~~ right?

Mr. Candy: That's right, 12.

Sep. 12/73
12.00 to 12.05 pm
fvk

Mr. Shibley: That would be one every three months?

Mr. Candy: That's right.

Mr. Shibley: And at the moment, the figures they have propounded in very large measure are allowances. They haven't got enough specifics as to the design to do more than that. Is that correct?

Mr. Candy: Yes. Could I just explain ~~the~~ Hanscomb ~~the~~ Roy and why we got Hanscomb ~~the~~ Roy?

Mr. Shibley: Sure.

Mr. Candy: Because of this problem, of course, ~~the~~ subsequent to the commission meeting on November 1, I then ~~the~~

~~the~~

(Tape H-2396 follows)

Sept. 12/73
12:05-12:10 pm
PLG

(Mr. Candy)

~~Since out to the Commission meeting on November 1, I then~~
made a recommendation to the Commission that we retain
Hanscomb Roy. I got Hanscomb Roy in and discussed the
situation with them. Prior to that I told them the
circumstances and that they would not be the subcontracts
on that would not be available to them, ^{that it} ~~but~~ would have to
be done from physical examination of the site and from
working drawings and details which would be provided to them.
Now, the first thing that they were asked to do was to come
up with a parameter estimate; that is an overall estimate
which ~~is~~ really forms a format for future estimate reviews.
Then, I felt that in tying them down to twelve interim
reports, one ~~every~~ every three months, I would then have a
pretty good idea, depending on the progress of the job and
the money, ^{the} the cost of the job as estimated at that point, ~~---~~
that we would have a pretty good idea of where we were going cost-
wise in relation to the construction schedule of the job.
Now, at the first report that came out, there was very little
information. As a matter of fact, most of the information
was the preliminary spec and sketch drawings, so that the
first estimate was a pretty preliminary estimate, in that I
don't think they had any electrical drawings at all. There
were various things that they were not aware of that they
had missed, ~~and~~ ^{and} when I got this estimate I got them in and
pointed out the things where I felt they had overlooked entirely
and then when this inquiry ~~on~~ came along, then I realized that
we had better do something and try to get the best estimate
we could get for this purpose. I remember getting Rasmussen
and McCormack, the two people from Hanscomb Roy, in my office.
I was down at 620 ~~in~~ then. I had Mr. Gordon and Mr. Sissons
in the office at the same time, purposely, and I said to
Hanscomb Roy that "I want you to go back to Canada Square, get
as much information as you can, get the best estimate you can.
I am not going with you, I am not going to hold your hand, and

Sept. 12/73
12:05-12:10 pm
PLG

(Mr. Candy)

I want whatever you put up to be prepared to testify to at this inquiry,¹¹ and so I purposely stayed away from the meetings. The only meeting I attended was the last meeting, which is the one where they revised the May 17 one, and my purpose in being there was to make a few decisions on the basis of materials. You know, in the lobbies for instance, ^{the} type of ceiling in the lobby. Canada Square were saying, "What do you want; this, ^{or} ~~this~~ this or this?" and somebody had to decide these things in order that they could include these in their estimate.

Now the first estimate that they came up with, that is the first May 17 one, I talked to them on the telephone, or they came in to see me, I ¹¹² forget¹¹ which. On the basis of that they told me where this thing was going, and that is where I said, "Well, put the carpets in and put the ~~sprinklers~~ sprinklers in." When we did this, I talked to Mr. Moog about it and Mr. Moog was against that. He didn't think ^{it} should be in there and we had some discussion about it ourselves. And then, — this is at the point I guess where Hanscomb Roy then went back to Canada Square and Canada Square then gave them a lot more information than they had given them before, But I want to also point out ~~that~~ some of ~~these~~ these meetings I think ~~that~~ were held in ~~Rasmussen's~~ Rasmussen's office ^{that} the firm of Hanscomb Roy have people of their own on their ~~own~~ own staff. They ~~have~~ mechanical engineers and they are not dependent entirely on other people's consultants or on the developers people. They have people themselves, and I made it absolutely clear to Rasmussen that whatever he put down would ^{must be} be his estimate and must be something that he ~~would~~ is prepared to stand ~~behind~~ behind at this hearing. So that it is quite true that some of those are still estimates, or allowances in there, because there just ~~isn't~~ isn't enough information. ^{But} I get now four sets of drawings and four sets of specs of every ~~contract~~ contract that goes out, ^{at least these} completed drawings, and when I get these, one set goes to Rasmussen. I have a clerk who works on the job all the time who ~~is watching~~

September 12, 1973
12.10 - 12.15 p.m.
M.R.

(Mr. Candy)

~~has Adamson I have a clerk who works on the job all the~~
time who is watching the job. He gets a set down there. Our building and office facilities people get a set and I keep a set in my office and we have meetings together and compare these drawings. I think the question was asked the other day "How are they building the building if they haven't got drawings or something?" but these drawings do exist and of course, we have been very reluctant to approve anything while this inquiry is going on and quite frankly I haven't had very much time to do it in any event but we are sort of doing it by exception. I've looked these drawings over. If I see something that is wrong then I'll bring it to their attention but with what they are doing now, if I'm satisfied with ~~that~~ what's in there, there is no reason to stop them doing this, then they are going ahead but drawings are prepared and drawings ...

Mr. Shibley: You've also got Gordon S. Adamson collaborating?

Mr. Candy: Oh, yes.

Mr. Shibley: They are creating some input and ...

Mr. Candy: Oh, yes. As a matter of fact, they are taking quite an important part in the building now, much more so than they were in the beginning. So they are in there watching it as well. They are employed, of course, by Canada Square.

Mr. Shibley: I realize that. But they have responsibility in the matter?

Mr. Candy: Oh, yes.

Mr. Shibley: Mr. Candy, if I could leave that if we are finished with Hanscomb Roy, I want to just touch on a number of things that evolved from witnesses who followed upon your earlier testimony.

And just to - this won't take long. I hope it won't be painful, as the doctor says. But I want to take you back into 1971. There is now evidence that on August 31, 1971, you

September 12, 1973
12.10 - 12.15 p.m.
M.R.

(Mr. Shibley)

remitted to Mr. Moog, under cover of a letter which is Exhibit 148 the copy of Hydro's annual report, and in the letter you say - you send the annual report and a copy of a book *about* ~~with~~ Ontario Hydro 1970 explaining our financial position and scope of operations. Then you say, "I trust this information will be useful for your purpose."

Now, when you remitted those documents to Mr. Moog - I should also remind you that Mr. Moog, by letter of September 9, I believe, forwarded ~~the~~ an annual report of ____

Mr. Candy: Yes

Mr. Shibley: Hydro to the Swiss bankers with which he had met in August of 1971. When you sent this material along to Mr. Moog and said: I trust this information will be useful for your purpose, were you aware of the fact that the purpose intended for the documents was to send them on to Switzerland?

Mr. Candy: No, I absolutely wasn't. He, as I think I said in my previous testimony on this same thing, ~~what he~~ - the way he put it to me was that we had found out a lot about him, he wanted to find out something about us. I think he asked me if we made a profit or something. But any idea of sending it to any financial institution was not mentioned to me.

Mr. Shibley: He met with you on August 25th .

Mr. Candy: Yes.

Mr. Shibley: ...which was after his return from Switzerland.

Mr. Candy: Yes.


Mr. Shibley: Having mentioned to you before going on that trip as early as June that he was going to Europe, having mentioned to you that financing was key to the undertaking of this project for Hydro. I think he also mentioned to you that he might take the opportunity to look into the ~~financ~~ financing when in Europe.

September 12, 1973
12.10 - 12.15 p.m.
M.R.

(Mr. Shibley)

Did he mention to you on his return, ~~and~~ at the meeting of October 25th or in any manner on his return, that he had in fact made inquiries for Swiss funds to finance the Hydro head office building?

Mr. Candy: No. He never did. He played that pretty close to the chest. ~~I never~~ - After that famous memorandum of mine that stated that he was going over to Europe, I never really gave that another thought and I had met Mr. Moog I think in early August - what was it? - the 10th or some date prior to that - and here it was only the 25th - I wouldn't have even suspected he'd been there and back in that time.

Mr. Shibley: Mr. Candy, I just want to know what you knew in that respect. I just - in order to be clear on this: On August 25th Mr. Dean sent two memoranda to two other departments, and 

H-2398 to follow

Sept. 12/73
12.15 to 12.20 pm
DT

(Mr. Shibley)

~~August 25th. I think I sent a memorandum to the legal department~~

on August 27th another memorandum, also to another department evoking responses, all of which came back - or one came back in September, two came back in October and he did another in October. So far as you are concerned, you didn't communicate anything to Mr. Dean as to the actions of Mr. Moog.

Mr. Candy: No.

Mr. Shibley: Is that right?

Mr. Candy: Definitely not.

Mr. Shibley: Did you have any discussion with Mr. Dean as to the fact that he should collect this - or arrange to have this data collected? ~~I think I did~~ I think you know the memoranda I am talking about when he fired a memorandum off to the legal department, to the ~~T~~reasurer and to one of the economists, I think, and Mr. Gush, ~~in~~ the period of August 25th.

Mr. Candy: Yes, there's really no connection, though.

Mr. Shibley: In so far as you are concerned -

Mr. Candy: No.

Mr. Shibley: ~~you~~ you have nothing to contribute by designation?

Mr. Candy: No.

Mr. Shibley: Then in October, the evidence now indicates the following activity. There's memoranda in the Ames file of communications between Mr. Moog and they; there's indications of memoranda emanating from the various departments within Hydro and then in November of '71 we have the memoranda of November 2nd and the memoranda of November 22nd and the notes on logistics of the ~~25th~~ 25th. Now, within the month of November we also have the evidence referable to the communications between Mr. Moog and the Swiss.

Mr. Candy: Yes.

Mr. Shibley: ^{on} One ~~of~~ the 9th - I'm sorry, I am not sure of the date. In any event, what I want to know, Mr. Candy, is just one more thing I'll remind you that in the Ames file at a meeting in October, Mr. Moog appears to have indicated to them that he expected to make firm the negotiations within the next few weeks which ~~was~~ ^{was} projected into November. You may remember me reading that.

Sept. 12/73
12.15 to 12.20 pm
DT

Mr. Candy: Yes.

Mr. Shibley: Now against the background of that very summary outline of the evidence, did you have conversations with Mr. Moog during October and November of 1971 referable to his source of financing for this project?

Mr. Candy: No, the only thing -- I think it was some time in November when he showed me that prospectus --

Mr. Shibley: Yes.

Mr. Candy: And all he did was show me the thing and say -- that funds are available there.

Mr. Shibley: Now in the November 25th exhibit, the phrase is employed, "so favourable a rate of financing." You remember the famous quotation ~~but~~ ^{that} Canada Square, or a developer, I'm sorry, who has so favourable a rate of financing. In that --

Mr. Candy: Which report is this in now?

Mr. Shibley: I will give it to you, in the November 25th -- I believe it is exhibit 25, Exhibit 26. That's on page 2. The memorandum says: the developer in whom we have complete confidence and to support this decision by the fact that we have received so favourable a rate of financing from him and so favourable an end rental that we chose him to participate." Now, were you given any data --

Mr. Genest: Mr. Shibley, can I just put him ~~in~~ in the picture?

Mr. ~~Shibley~~ Shibley: Yes. On page 2, the second paragraph, about five or six lines down. On what basis was that representation made at that time?

Mr. Genest: I don't understand that question, Mr. Shibley.

Mr. Shibley: Well, the memorandum --

Mr. Genest: Why don't you go back to your first one.

Mr. Shibley: The memorandum suggests that Hydro now have information from a developer in whom they ~~have complete~~ --

Sep. 12/73
12.20-12.25 pm
V.H.

(Mr. Shibley)

~~that Hydro now have information from a developer to whom they~~
have complete confidence and from whom they have received so
favourable a rate of financing and so favourable an end rental."
Now I hope we are not

Mr. Genest: You are paraphrasing.

Mr. Shibley: No, I am reading it. I hope we are not
going to have to engage in a debate about which developer this
memorandum is talking about.

Mr. Genest: Oh no.

Mr. Shibley: Having regard for the fact that the
only developer dealt with then was Canada Square, the Ames
file indicates that Moog was expecting to move towards to a
conclusion in respect of negotiations then and make an offering
for financing in January of 1972, leaving all of that behind,
at the moment, what interests me, Mr. Candy is, did Mr. Moog
indicate to you or anyone within in Hydro that he had a
favourable rate of financing and could provide -- and did he
also say what the favourable end rental would be if his company
was chosen?

Mr. Candy: The favourable rate of financing I assume
is from this prospectus that he showed me at six and half per
cent in Swiss funds.

Mr. Shibley: And that's all?

Mr. Candy: That's all. As far as the end rental, we
never discussed rental at all. In fact, we never discussed rental
until I got his proposal. The only rental we knew about was
the ^{\$5.09} five or nine from OISE, whether that had any ^{influence} ~~to do with~~
~~it~~ or not, I don't know.

Mr. Shibley: So that as at the time the group of you
were talking about this in November, that was the limit of the
information available?

Mr. Candy: That's right. That's right.

Mr. Shibley: I see. Now then

Mr. Genest: Mr. Shibley, I am sorry. As you see, we
are flogging this memorandum to death, but I really am under the

Sep. 12/73
12.20-12.25 pm
V.H.

(Mr. Genest)

impression that where Mr. Sissons has in fact used the present tense, certainly I thought the evidence he gave to the committee many months ago indicated that they had not received ^{that} that this was an alternative, that this was a hypothetical proposition he was putting. If there is any doubt about it in the minds of anybody in the committee, I think Mr. Sissons should be recalled. *Please do, because*

I'm going to have it marked
Mr. Chairman: ~~I think it is a~~ "speculative document" on this —

Mr. Genest: No, but I think that people have drawn the conclusion that Mr. Sissons had received a favourable rental and a financing. ^{rate} Its very important that you at least have the right oral evidence on that.

Mr. Shibley: I am interested in what representations Mr. Moog was making to Hydro, ~~was~~ either through Mr. Candy —

Mr. Genest: *Oh yes, quite legitimate.*

Mr. Shibley: ... through Mr. Sissons, through Mr. Gathercole, or anyone, remembering by this time he had ~~as~~ also met Mr. Gathercole, *I believe, on* —

Mr. Genest: *We agree* ~~that~~ that is all quite relevant.

Mr. Shibley: Now, I want to know, Mr. Candy, can you help us as to what representations Mr. Moog had made to Hydro, being all-encompassing, as to the favourable rate of ~~financing~~ financing and as to the favourable end rental, if his company was chosen?

Mr. Candy: Well, in the first place, the only person Mr. Moog would have talked to was me. He did meet with the chairman - I have forgotten that date. *November somewhere.*

Mr. Shibley: Twenty-second November.

Mr. Candy: The twenty-second. I was there when he talked to the chairman. He certainly didn't mention anything about this to the chairman and anything I had, anything I was in possession of or knew about was simply

Sep 12/73
12.20-12.25 pm
V.H.

(Mr. Candy)

that prospectus. We never talked about end rentals at all and I think

Mr. Shibley: All right.

MR. Candy: ~~this~~ this is probably influenced by the OISE thing.

Mr. Shibley: Okay. Now let's go one step further.

In any event, it was a salient factor in the thinking of you people in Hydro, all of you, that Mr. Moog, whether by showing you this prospectus or however, was able to fund this project with inexpensive money. Is that right? It was very basic.

Mr. Sandy: Yes. Although I think ⁱⁿ this thing ^{it} is limited to 20 million or something.

Mr. Shibley: I realize that.

MR. Candy: Yes.

Mr. Shibley: But he was telling you "I can get cheap money, so I can build you a better building at the same rental or at a favourable rental because I can get cheap money." Is that right?

Mr. Candy: Yes, it was a selling point, *he had*.

Mr. Shibley: It was a selling point. And he showed you the prospectus to show just how cheap that money was going to be — six and half per cent. Is that right?

Mr. Candy: *Sure* Yes.

Mr. Shibley: And as of November, he was telling you it was 20 million ^{limit} and would have to raise the rest otherwise, that was part of his proposal, ^{even} in January. Is that correct?

Mr. Candy: That's correct.

Mr. Shibley: And by March, he was still saying ~~20 million Swiss cheap money~~

H-2400 follows

Sept. 11/73
12:25 - 12:30 pm
C.B.

(Mr. Shibley)

~~By March he was still saying~~ \$20 million Swiss, cheap money.

Is that right?

Mr. Candy: Right.

Mr. Shibley: You were sent by Mr. Mink or asked by Mr. Mink to go and see him and ask him whether it was firm in that respect. Is that right?

Mr. Candy: That's right.

Mr. Shibley: And did he in fact tell you that his financing was firm as to Swiss funds to the extent of \$20 million at 6 1/2 per cent?

Mr. Candy: I think that is what I had on that, whatever I got from him and it's in that report.

Mr. Shibley: Well, Mr. Moog ^{leave} ~~needed~~ some question about what he told you on that occasion. I want to know from you. Did you explicitly ask him on March 30th when you met him, having been directed by Mr. Mink to ascertain whether his financing was secure, did you expressly ask him, "Is the financing secure to the extent of \$20 million at 6 1/2 per cent?"

Mr. Candy: Haven't I got a memorandum somewhere, where I stated that?

Mr. Shibley: Yes, I'm sorry, I should show you that. It's ~~marked~~ March 28, exhibit 65, March 30, 1972, if the witness might have that.

Mr. Genest: Which is the exhibit number?

Mr. Shibley: 65, March 30, 1972. Now, ~~the~~ the earlier memorandum to you ~~was~~ was one where in. In any event you'd been asked to make sure and you said,

"3. The financing arrangements are secure insofar as Swiss capital is concerned at

6 1/2 per cent ~~and~~ interest, plus government tax which ~~and~~ would be absorbed by the developer. But the balance of approximately ~~\$20.00~~ \$20 million can be obtained from Equitable Life in the U.S. at possibly eight per cent interest under which conditions the rental rate per square foot per year would remain at \$4.92."

Sept. 11/73

12:25 - 12:30 pm

.C.B.

Mr. Candy: Yes.

Mr. Shibley: Now did Mr. Moog tell you what is in

paragraph three of this document?

Mr. Candy: I would say yes.

Mr. Shibley: Well I want to be ~~not~~ ^{not} I would say,?"

because there is a contradiction here in terms of what's in the document and what Mr. Moog has said. Did he tell you that the financing, so far as \$20 million at 6 1/2 per cent, ^{was concerned} was secure?

Mr. Candy: That is very difficult for me to remember.

I can only really go by what I've said here. This is dated March 30. Mink asked me on the....

Mr. Shibley: The 28th.

Mr. Candy: On March 27th, I see a memo ~~from~~ ^{to} from Mink

dated March 27th...

Mr. Shibley: Sorry, right.

Mr. Candy: I talked to Moog on when, the 28th?

What date did I...

Mr. Shibley: Let me look at that. Yes, Mr. Mink memoed you on the 27th and you met him on the 30th at 10:30 am.

Mr. Candy: So this is the same day I wrote this memorandum.

Mr. Shibley: Yes, that's right.

Mr. Shibley: So what had been discussed would be very fresh in your mind.

Mr. Candy: I don't think so, that's —

Mr. Shibley: Did he tell you that it was secure for \$20 million at 6 1/2 per cent?

Sept. 11/73

12:25 - 12:30 pm

C.B.

Mr. Candy: I can only go by what I've got here, and I'd say if ~~there~~ I have it here that this must be what he said. I can't recall.

Mr. Shibley: You wouldn't have memoed the file in terms different than what he had told you, would you?

Mr. Candy: I wouldn't think so, I don't usually do that. That's the reason I memo the file, so I'll remember.

Mr. Shibley: Well, this was an important facet of dealing with Mr. Moog, as you've indicated, because cheap money meant more money for the building.

Now what concerns me is that ~~I~~ I can't remember his evidence precisely enough, I'm going to try and paraphrase it — but ~~it~~ it was my recollection ⁱⁿ Mr. Moog's evidence that he did not tell you it was secure at that time.

~~Mr. Candy: Well I thought the tenure of Mr. Moog's evidence was he kept telling "Mr. Candy don't you worry about the money I'll..."~~

H 2401 to follow

Sept. 12/73
12:30-12:35 am
PLG

(Mr. Shibley)

~~tell you it was secure at that time.~~

Mr. Finlayson: I thought the tenor of Mr. Moog's evidence was he kept telling Mr. Candy 'don't you worry about the money. I'll get the money and I've got the money' and things of that nature, and he also said that he didn't discuss any details with Mr. Candy because he didn't think that ~~he~~ he knew ~~anything~~ anything about ~~the financial matters~~ ^{financial matters}.

Mr. Shibley: Well you see, that is right and Mr. Candy, what I am concerned about is that you were explicitly instructed on March 27, ~~xxxxxxx~~ "How secure are the financing arrangements?" Would you not put that precise question to Mr. Moog? "How precise are your financing arrangements?" Did you do so?

Mr. Candy: Well I would think so and he may have answered me in the way that his counsel has said. I may have taken from that it was secure, but whether he actually used the word "secure" or not,...

Mr. Shibley: Whatever he said, you interpreted it.

Mr. Candy: I interpreted it ~~in~~ that way.

Mr. Shibley: I see. You went on ~~xxxx~~ and even discussed details ~~it~~ like government tax, that he would absorb that. Is that correct?

Mr. Candy: That's right.

Mr. Shibley: So that he was saying, 'yes and there is a tax on Swiss money and I am prepared to absorb it.' Is that right?

Mr. Candy: That's right.

Mr. Shibley: And then on the next ~~xxx~~ page, while we have the document in front of you, at the very last paragraph, you will see it says:

"In the event it is felt that the size of the building, approximately one million ~~sq~~ square feet, provides for more expansion than is felt necessary or justified, the developer would give an undertaking in writing, to rent back 200,000 square feet, which he would sublet to

(Mr. Shibley)

another tenant."

Now Mr. Candy, the responsibility for the surplus space in this building under the terms of the contract, is that of Hydro, not Canada Square. What happened in terms of the understanding that is recorded in the March 30 document that the responsibility for the unrented area was to be that of Canada Square?

Mr. Candy: I remember him saying that.

Mr. Shibley: Yes.

Mr. Candy: Making that statement, you know, 'we'll take ~~it~~ it off your hands or something like that'. That I think is the only time that has ever been discussed.

Mr. Shibley: ~~That's~~ That's right.

Mr. Candy: It was brought up at that point and I think actually it is in our interest not to give it to him. I think it is in our interest to keep it and rent it ~~ours~~ ourselves, but that is not an ~~a~~ excuse for not carrying it on. I don't think that -- I think that is something he said in passing.

Mr. Shibley: Oh you mean this was the only time it was discussed with Mr. Moog?

Mr. Candy: Yes.

Mr. Shibley: I see.

Mr. Candy: I didn't ask him that. He brought that up.

Mr. Shibley: Did you tell Mr. McCallum that Mr. Moog had agreed to this sort of term?

Mr. Candy: I doubt it because I don't think that I really took that very seriously myself.

Mr. Shibley: Do you know there is a memorandum indicating that there is a large amount of space that Hydro is presently renting, which together with the surplus of space in this building, will confront Hydro with a subletting undertaking when ~~this~~ this project is completed. You know the memorandum I am talking about. I think there is as much as 5 or 600,000

Sept. 12/73
12:30-12:35 am
PLG

~~xxxxxx~~(Mr. Shibley)

square feet involved in the overall.

Mr. Candy: Yes, there are ~~222~~ 345,077.

Mr. Shibley: Yes. Now then, was this not an important term therefore to pursue, having regard for the fact that Mr. Moog was telling you he would take it off your hands?

Mr. Candy: I don't think I considered that very seriously.

Mr. Shibley: At least you had the option in favour of Hydro to have them take it off your hands.

Mr. Candy: I mean, if he were going to take it off our hands, he would be taking it off our hands at a lower rental than we could get, and ...

Mr. Renwick: Mr. Chairman, could I just ask a question on this? I may be off base on it, but my assumption from reading the contract document is that the responsibility for the renting of that commercial space was on Canada Square.

Mr. Candy: That's right.

Mr. Renwick: Am I correct?

Mr. Candy: No, we are not talking about commercial space here. We are talking about office space.

Mr. Shibley: Surplus office space. There was expected that there would be 200,000 square feet of office space surplus which Hydro will have to sublet because ~~of~~ its own requirements don't extend to a million square feet.

Mr. Renwick: This is then -- there has been a background rumour around in the room -- I don't know how many people it reached, that if people called Canada Square asking to rent space in the new building, they are ~~for~~ referred to someone down in Hydro whose name escapes me?

Mr. Candy: Whelen?

Mr. Renwick: Sounds right.

Mr. Candy: Yes. He is in our property department. He was here yesterday.

Mr. Renwick: Is that relating to this space, or is that

H 2401-4

Sept. 12/73
12:30-12:35 ~~am~~ pm
PLG

(Mr. Renwick)

relating to the...

Mr. Candy: That's relating to this space.

Mr. Renwick: So that if Mr. Sissons' barber wants to get into that commercial space, he just calls Canada Square. Is that correct?

Mr. Candy: Yes. If anybody calls me about commercial space...

Mr. Renwick: And have Mr. Sissons take him to Canada Square.

Mr. Candy: I turn them over to Mr. Patter of Canada Square, but if anybody calls Canada Square —

Tape H 2402 follows ✓

September 12, 1973
12.35 - 12.40 p.m.
M.R.

(Mr. Renwick: The confusion that has been part of this so-called rumour, at least, that I've heard is that so far as this surplus office space is concerned, Canada Square would refer people to Mr. Whelen

Mr. Candy: That is correct.

Mr. Renwick: and the property ~~was~~

Mr. Candy: That is correct.

Mr. Renwick: I see. Thank you.

Mr. Shibley: I've shown you what is Exhibit 85, Mr. Candy, dated July 19, 1972, and still dealing with the representations made respecting source of funding -

Mr. Candy: ~~That is~~ yes.

Mr. Shibley: This is the memorandum, the third paragraph of which contains the clause: "They anticipate - I'm sorry, "Canada Square now advise us that they anticipate all their long term financing will be obtained from Switzerland".

Again, Swiss money to your mind, meant cheap money, is that correct? Inexpensive money?

Mr. Candy: Yes. Well, let's look at it another way. I think I've been referred to before as a conduit of information. I think I'm a conduit in the financial field and I wouldn't say that a major concern of mine was where they got the money.

Mr. Shibley: I realize this. It's the cost of the money. That's why I asked you the question. In your mind, and in the minds of the Hydro people, Swiss money meant inexpensive money.

Mr. Candy: Our people, as you will see from the financial people, ~~that~~ had always worked on a basis of eight per cent. That is, we never felt we would get six and a half per cent money at six and a half over here. You know, they've assumed the figure of eight percent when ~~that~~ they calculated.

Mr. Shibley: If that's true, Mr. Candy, what was the point of the agreement ultimately entered into in October of 1972 whereby Hydro would share in any savings under eight per cent?

September 12, 1973
12.35 - 12.40 p.m.
M.R.

Mr. Genest: That's argumentative, Mr. Shibley.

Mr. Shibley: No.

Mr. Genest: In the event he got his money cheaper, we'd share it.

Mr. Shibley: No. The witness has said they always presumed it was going to be eight per cent. I want to know why they bothered with an agreement.

Mr. Candy: They did their calculations on eight per cent.

Mr. Shibley: I see. But getting back to this document for the moment: I'm only interested really - we know what it worked out at ultimately, how things worked out, what I'm interested at the moment in knowing is what the representations were that Mr. Moog was making to you at this time. Did he say to you then that he anticipated that all his long term financing would be Swiss?

Mr. Candy: I would say he did. I think I've just gone back and asked him and that's what he told me

Mr. Shibley: Was this another one of his selling points?

Mr. Candy: I don't know.

Mr. Shibley: Was it another one of his selling points?

Mr. Candy: No, I think - I don't think it was a selling point because it was six and a half per cent money. I think we never could - I mean, through the agreement we came to a point in the agreement where we had Canadian - we talked about Canadian/American funds. I remember Mr. McCallum and I were even questioning should we have European funds in there. You know, the agreement is based on either Canadian or American and we even - it was very late. ~~We~~ kept trying to find out where the funds were coming from and we finally decided that they weren't coming from the U.S. and we didn't have to include any other countries in the agreement.

September 12, 1973
12.35 - 12.40 p.m.
M.R.

Mr. Shibley: Now, Mr. Candy, on a different topic.

Mr. Bullbrook: I just want to pursue that for a moment. Something that stuck in the back of my mind and I asked Mr. Genest for help too if he ~~could~~ could. Actually at the time of ~~the~~ entering into the agreement, at least the preliminary aspects of it, I thought the evidence to be that Mr. Moog really didn't have a commitment for funds at that time and I'm interested in the question of Hydro bearing the burden of the foreign exchange rate.

The explanation which I thought was satisfactory in connection with that burden that Hydro had, because of their selling of power, ^{had} ample funds in the United States to offset any difficulty there ~~and~~.

Mr. Genest: Not totally, I think Mr. Allen had a point on that. Mr. Nastich is going to deal ~~with~~ with that I think, in detail.

Mr. Bullbrook: Yes, well, all right, fine. I just wanted to set that up as a preliminary comment. What if the funds had been European funds? What if the funds had been European funds or is that going to be explained after?

Mr. Shibley: Well, I thought Mr. Nastich ...

Mr. Genest: I think that should be put to Mr. Nastich.

Mr. Bullbrook: All right. Fine.

Mr. Chairman: ^{Mr.} Glen Hodgson.

Mr. R.G. Hodgson: Mr. Candy, every time that you talk to Mr. Moog and I think he mentioned many references in the evidence he gave before this committee, ~~he was constantly~~ ~~did he constantly~~

H - 2403 - 1

(Mr. R. G. Hodgson)

~~any sources in the building he was to be used~~

Did he constantly mention to you that Hydro has got to get on with this building because the interest rates are just going to go sky high? Was he impressing that in almost all these instances upon you?

Mr. Candy: Yes, quite a bit. I can remember being there when he said it is costing us \$10,000 a day, ~~you know~~ and I never got too excited. But this is what he used to say, it is costing us ^{every day} \$10,000 a day ~~that~~ we don't settle this thing ~~you know~~.

Mr. R. G. Hodgson: But he was really preoccupied with that situation and he was impressing upon Hydro through ~~you~~

Mr. Candy: Mr. Moog is an aggressive man, ~~you know~~ and he is quite involved in financial things, He has quite an interest in that, and this was certainly a thrust all the time that ~~you~~ ~~know~~ I was in there to get a building built, he was in there to borrow money. Yes, he impressed this on me quite a bit.

Mr. R. G. Hodgson: Thank you.

Mr. Shibley: I want to ask you about what is Exhibit 67, the April 10 memorandum that you combined with Mr. Mink to compile, and also about Mr. Bradshaw's memorandum of March 28 which is Exhibit 154.

Mr. Candy: Yes, I know them.

Mr. Shibley: Now, I would like to know, first of all, Mr. Candy, how it came to be that Hydro was in receipt of Mr. Bradshaw's memorandum outlining particulars about Canada Square at a point of time when you ~~and~~ Mr. Mink were in the throes of compiling this very comprehensive memorandum?

Mr. Candy: I think you asked me this once before and I think you indicated then that this document, ¹⁵⁴ ~~154~~, was found in my file, is that right?

Mr. Shibley: Yes, it was, Mr. Candy.

~~Mr. Candy:~~ I might say that in the list of documents that it was attributed by your people initially, to J. A. Blay but it

Sept.12/73
12.40-12.45p.m.
B.A.

H-2403-2

EX

(Mr. Shibley)

turned out not to be him. It is Jim Bradshaw, ^{It is} ~~it is~~ confirmed that he prepared it.

Mr. Candy: Yes. I don't think I can add any more than I said before.

Mr. Shibley: What I want to ask you quite directly, is did Mr. Moog provide this to you to assist you in the compilation of the April 10 report?

Mr. Candy: No, no, I am quite capable of preparing that report.

Mr. Shibley: I don't mean it in that sense. I mean it in the sense that you said -- you see, the Chairman had given instructions to compile a submission, or material for a submission to the Premier ^{and} ~~the~~ cabinet. This is a very major document, this April 10 memorandum. ~~XXXX~~ I am wondering, did you go to Mr. Moog and say, "We have to work up a brief, can you give us something of a history on Canada Square and the advantages of dealing with your company, etc., etc.", as a result of which request you got this document from Mr. Bradshaw.

Mr. Candy: ~~W~~ Quite honestly, I have no recollection of ever doing that.

Mr. Shibley: You have no recollection.

Mr. Candy: I honestly ~~had~~ haven't.

Mr. Shibley: Did you employ that document as part of the material you used to compile the April 10 memorandum?

Mr. Candy: Not to my knowledge.

Mr. Shibley: You know the drafts of that memorandum are dated April 6, I think.

Mr. Candy: Yes, yes.

Mr. Shibley: You ~~don't~~ don't know when you got that memorandum in your possession.

Mr. Candy: No, I really don't. I was quite surprised to find it there when it came up in this enquiry. I don't recall it at a

Sept. 12/73
12.40-12.45p.m.
B.A.

Mr. Shibley: Then, as Appendix "B" to that April 10 exhibit, that is the one that is styled, "Geographical Scatter ^{has} Effect" and ~~as~~ such figures as telephone rentals - \$60,000, transportation - \$35,000, ~~move~~ move cost increment, \$70,000, remote operation impairment - \$107,000! You remember I reviewed this document with Mr. Moog as it compared in its content very much with one of the memorandum from his file? Do you remember that?


Mr. Candy: Yes.

Mr. Shibley: Now, can you please explain to this committee how information in this exhibit formed part of a memorandum in Mr. Moog's file, or vice versa, how information on a written memorandum in Mr. Moog's file found its way into an appendix to this exhibit.

Mr. Candy: The memorandum in Mr. Moog's file, as I ~~er~~ recall, was a hand_scribbled note, or something.

Mr. Shibley: Yes.

Mr. Candy : Well, in the first place this appendix ^{to} ~~was~~ I had nothing whatever/do with preparing it. I couldn't prepare it if I wanted to because I don't have that kind of information. It is prepared by Mr. Witbeck's department, and I think Mr. Manson and his department probably put



(Tape H-2404 follows)

H-2404-1

(Mr. Candy)

~~that kind of information. It is prepared by Mr. Witbeck's department,~~
~~and I think by Mr. Tanson whose department probably put this together.~~
is their
The "geographic scatter" ^{verbiage}, not mine. Mr. Moog had no connection at all with Mr. Witbeck, and didn't even know him, and there was no way they could get together. Now when you say, how did any information ~~come~~ ~~be~~ ~~come~~, it's possible that in talking to Mr. Moog at some point, and this is not secret information, but in talking to him some time when he is saying, "We have got to get on with this thing, ~~and~~ ^{it} is going to cost us \$10,000 a day", and I say, "Well, it is costing us so much a day as well, so much a year" this type of thing. I may have on the phone talked; I don't know ^{if} he is scribbling this down.

Mr. Shibley: Mr. Candy, I'll just help you to this extent. You had a meeting with Mr. Moog on April 10?

Mr. Candy: I believe that is right.

Mr. Shibley: Which is the date of this memorandum.

Mr. Candy: Yes.

Mr. Shibley: Did you take the memorandum to that meeting and show it to him?

Mr. Candy: No, I did not. I've never taken that to his office, and I am sure, I would doubt very much that I had it on the ^{teuth} ~~teuth~~.

Mr. Shibley: Did you take the draft of that document with you?

Mr. Candy: No.

Mr. Shibley: Because, ~~as~~ you see, the coincidence of using terms like "geographical scatter effect", if you want Mr. Moog's notes..

Mr. Candy: ~~well~~ ^{2/10/2} I've seen ^{it}, I know what you are referring to.

Mr. Shibley: The coincidence of the headings of extra costs, or cost savings, and the coincidence of amounts, ~~as~~ makes it very clear, to me anyway, that either he saw the appendix B and made notes of what was on the appendix, or he himself provided information for the compilation. I think frankly it is the first.

Mr. Candy: Yes, well he never..

Mr. Finlayson: There is also ~~he had~~ Mr. Moog's explanation that he was talking to Mr. Candy on the phone well after April 10,

H-2404-2

(Mr. Finlayson)

and that those figures must have been given to him by Mr Candy, and he simply wrote them down. So there is that explanation too.

Mr. Shibley: Well, I'm testing that explanation, Mr. Finlayson because I'd like the exhibit produced to you, Mr. Candy—218. It smacks, I must tell you, of somebody who is looking at a document and scribbling his own notes of information from a document that he has been shown.

Mr. Genest: Or talking on the phone, Mr. Shibley, surely?

Mr. Shibley: All right, or talking on the phone. But there was a meeting with Mr. Candy on April 10. Was there any other purpose for the meeting of that day?

Mr. Candy: I don't know, unless I have a memo of that date or something I have no...

Mr. Shibley: No, there is no memorandum in your material that indicates any purpose for the meeting.

Mr. Candy: The reason I am ^{as} as I said in my previous testimony, ^{as to} the April 10 memorandum, I contributed a certain part. Frank Mink had it printed and bound and looked after all that, and sent me a copy. Now if that thing is dated April 10 I am sure I wouldn't have had a copy by that time.

Mr. Shibley: But you had a draft, Mr. Candy, I'll produce it to you if you want.

Mr. Candy: Yes, I had my draft.

Mr. Shibley: April 6.

Mr. Candy: Yes, that's right.

Mr. Shibley: You see what I am wondering about is this, you are getting a submission together, the developer you are going to recommend is Canada Square. You prepare a draft on April 6. You are in possession of a memorandum of Mr. Bradshaw's of March 27, I believe, giving background material. Did you have ^{ve} drafted the April 10 memorandum ~~on~~ on April 6, by an April 6 draft, did you take that memorandum to Mr. Moog and say, "Look, this is what we ^{ve} worked up. Is it accurate? Is it complete? Can you help supplement it in any way?"

H-2404-3

Mr. Candy: I have absolutely no recollection of that, and I doubt very much that I would do that.

Mr. Shibley: This, of course, was a memorandum that was basic to the information provided, for example, to Mr. Nastich. He turned to that document, in fact he had it with him on the trip to Japan when they took it up with Mr. McKeough.

Mr. Candy: That's right.

Mr. Shibley: Is that correct?

Mr. Candy: That's right.

Mr. Shibley: Now then, in the submission of Canada Square on January 24, 1972, they even at that early date ~~make~~ make reference to the need ^{to} have the ^{co}operation of Hydro in the formation of a company referable to their funding, and also that according as they were successful in their financing plans, the rate would range from \$4.92 to \$5.25. Had you discussed prior to January 24 the idea of a Crown corporation to be formed?

Mr. Candy: ~~No, and when I saw that in there I never personally~~.

H-2405-1 follows

September 12, 1973
12:50 - 12:55 p.m.
B.G.

~~the Crown corporation to be formed?~~

no, w
Mr. Candy: No, and when I say that in there I never personally took that very seriously, because I felt that it was impossible in any event, and as you see, it was later killed by Mr. Houser, but I never took that or this government guarantee which you may come to, seriously, either one. The government guarantee part of it seemed to me to be ridiculous; if we were going to get the why wouldn't we borrow our own money?

Mr. Shibley: Well now, that was going to be the next thing. You were at the meeting of August 3 when Mr. Bradshaw received his instructions?

Mr. Candy: Yes, I think so.

Mr. Shibley: And Mr. Bradshaw said it was at that meeting that he was instructed that a government guarantee was part of the transaction.

Mr. Genest: Now, let's put Mr. Bradshaw's evidence fairly.

Mr. Shibley: Wait a minute.

Mr. Genest: Mr. Bradshaw is not sure that Mr. Candy was in the room all the time.

Mr. Shibley: Okay; I'll get to that. He said that it was at that meeting that he got his instructions. Is that right?

Mr. Candy: But not from me, that's —

Mr. Shibley: Okay, now, he wasn't sure as to whether you were there at the precise time when those instructions were forthcoming. Were you there?

Mr. Candy: I would say no, because if anybody had brought that up when I was there, I certainly wouldn't have gone along with that.

Mr. Shibley: Well now then, it found its way into Mr. Bradshaw's draft of August 24. Did you see that draft?

Mr. Candy: I think that went right to Mr. Houser, didn't it?

September 12, 1973
12:50 - 12:55 p.m.
B.G.

Mr. Shibley: Yes, but was a copy of it remitted to you for examination?

Mr. Candy: Not unless you found it in my files.

Mr. Shibley: All right, Mr. Houser then, on representations made to him he says by Mr. Bradshaw, left the government guarantee provision in the September 15 draft that he compiled, and which draft was sent on to Hydro by Mr. Houser. Did you see Mr. Houser's September 15 draft? Show him that copy, please. Exhibit 196.

Mr. Candy: I - is this the September 15th?

Mr. Shibley: Page 11 is the page I am particularly interested in, which contains the guarantee. Did you see that at the time it was submitted? ~~Mr. Candy~~ Mr. Houser sent it along under cover of a letter I believe, September 20th.

Mr. Candy: To me?

Mr. Shibley: I am sorry; ^{no;} no, no, no. Mr. Houser sent the copy of this ^{on} ~~alone~~ to Hydro. I am not sure who it was in Hydro he sent it to, but he said he had sent a copy of it on to his client. Did you examine the document then?

Mr. Candy: I can't be sure, Mr. Shibley, but when we got into a lot of these things, this was sort of legal jargon, that's the reason we hired Harries, Houser, Brown and McCallum.

Mr. Shibley: Yes, it was sent to you, as a matter of fact.

Mr. Candy: Yes.

Mr. Shibley: September 20th, part of Mr. McCallum's file, page 45. "Ken Candy, September 20th, I have prepared a draft of the enclosed agreement in respect of the new head office and enclose a copy for your use." So, you were the person ~~to~~ to whom he sent that. Did you read it then?

Mr. Candy: I ~~can't be sure~~ ~~Mr. Shibley~~ would ~~even~~ imagine that having sent it to me I read it. How thoroughly, I am not sure, but ⁽²⁾ ~~I read it~~ whether I —

Mr. Shibley: Well, did you bring it to anyone's attention that it contained a provision for a guarantee and should not have?

Mr. Candy: ^{No,} Not that I recall.

H-2405-3

September 12, 1973
12:50 - 12:55 p.m.
B.G.

Mr. R.G. Hodgson: Mr. Chairman, may I ask a question?

Mr. Chairman: Yes, Mr. Hodgson.

Mr. R.G. Hodgson: Would it be possible that you would give that copy to the Legal Branch, Mr. Candy? Would that be the reason why Miss ~~W~~ West questioned it?

Mr. Candy: I don't think - well, I am not sure at what point I started giving this information to Miss West. I know that before we got approval ~~from the Commission~~

(Tape H-2406 follows)

Sep 12/73
12.55-1.00 pm
V.H.

(Mr. candy)

~~I am not sure at what point I started giving this information to Miss West but I know that before we had approval~~
from the Commission, in my memorandum I had stated in there that our legal people had perused all this information, and I am not sure at what point I started giving it to Miss West.

Mr. Shibley: I might say, on October 23 Miss West ~~memoed~~ "Ken Candy has provided me with the last draft of the documentation" so it wasn't ^{2/}this document ^{4/}we are talking about.

Mr. Candy: It wasn't this one.

Mr. Shibley: What I would like to know, Mr. Candy, is ^{that} the concept of ~~the~~ provincial guarantee was carried forward until October 23, 1972, at which point of time Bradshaw was surprised to be told by McCallum and Houser, who had ^{1. thin} ~~the~~ the few days previous to that made up a list of points, decided there would be no guarantee, and Bradshaw expressed surprise that this was not to be provided. Now was there an understanding between Mr. Moog and anyone in Hydro that at least an effort would be made to get a provincial guarantee?

MR. Candy : Not so far as I was concerned. And I would have been the only one in Hydro...

Mr. Shibley: And notwithstanding that the provision found its way into the draft material of August 24, September 15 and continued in the documentation until October 23, it was never raised as an issue until then?

Mr. Candy: Apparently not.

Mr. Shibley: Do you know of any reason why Mr. Moog should have made a note "October 1 - Treasury Board"?

Mr. Candy: No.

Mr. Shibley: None at all?

Mr. Candy: No.

Sep 12/73
12.55-1.00 pm
V.H.

Mr. Shibley: On August 4, Mr. Moog became aware that he could not fund this project with Swiss money. Did he tell you or anyone in Hydro that this had transpired?

Mr. Candy: This is August 4, 1972?

Mr. Shibley: Seventy-two, yes.

~~Mr. Candy~~

Mr. Candy: No, because as I said before, both Mr. McCallum and I kept trying to find out where he was going to get his money. WE could never find out.

Mr. Shibley: ~~I want to know~~ He told you, though, on July 19 that he anticipated, or as at July 19, that he anticipated that all his money would be Swiss?

Mr. Candy: Yes.

Mr. Shibley: ~~as I said before~~ A and he was in fact pursuing that ~~because~~ we now know, because he went to Ames on July 25 and said 20-20 full ~~million~~ Swiss. Incidentally, you had a conversation about that with him also, did you not? The 20-20 arrangement?

Mr. Candy: Yes, at some point.

Mr. Shibley: Yes, he told you, now that I recollect, that it was to be \$40 million all Swiss on a year-apart basis? Right?

Mr. Candy: Yes, I think I recall that.

Mr. Shibley: That the Swiss were going to do the full financing. Did he tell you on August 4, or any time thereafter -- or I should put it another way. When was the first time that Mr. Moog told you that there would be no inexpensive money or Swiss money?

Mr. Candy: God, I can't help you there, Mr. Shibley.

Mr. Shibley: Pardon?

Mr. Candy: I am sorry. I can't help you there. I have no idea.

Mr. Shibley: In any event, when did Hydro first become aware that its own borrowings in Switzerland at about that time had conflicted with Mr. Moog's plans to borrow in Switzerland?

Sep 12/73
12.55-1.00 pm
V.H.

Mr. Candy: I wasn't aware of that *either*.

Mr. Shibley: Not until this hearing?

Mr. Candy: No.

Mr. Chairman: How are we doing there, Mr. Shibley?

I am looking at the time.

MR. Shibley: We are not going to finish before *lunch* but

I haven't much more to go with the witness, Mr. Chairman. I suggest we recess.

Mr. Chairman: I didn't know whether you had much more on the financing because I don't know if there are too many members of the committee concerned with it.

Mr. Shibley: No. I haven't. I am just touching base on a number of things. I have just a few more ...

Mr. Chairman: *Could we* ~~suggest that we~~ go til *quarter* after then?

Mr. Shibley: If you want.

Mr. Renwick: Mr. Chairman, I have some questions of Mr. Candy and perhaps it would make sense to recess.

Mr. Chairman: All right.

MR. Renwick: That is, if you were thinking *that* we could *complete with Mr Candy*.

Mr. Chairman: Well, I thought we might finish by quarter after but probably we can't on that basis. We will adjourn, or recess, then, til 2.15 pm.

The committee recessed for lunch at 1.00 o'clock, pm.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice
G.D. Finlayson, QC

Commission architect, Ontario Hydro:

K.H. Candy

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, September 12, 1973

Afternoon session

2407-2448

LEGISLATURE OF ONTARIO

SELECT COMMITTEE - HYDRO HEADQUARTERS.

The committee resumed at 2.25 o'clock, p.m.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order.

Mr. Shibley: Mr. Candy, you are now familiar with the fact that Mr. Smith wrote a letter to Mr. Seguin on August 21st, I believe, exhibit 169. Are you familiar with that letter?

Mr. Candy: Yes, but I'm not familiar with the letter. I know he wrote one.

Mr. Shibley: Did you participate in discussion about that letter at the time?

Mr. Candy: Never, never. I never knew anything about that letter until ~~at~~ this enquiry.

Mr. Shibley: All right. Did you hear within the Hydro sphere of people and places, anything within the period of ~~the~~ August, September and October of 1972, anything about the fact that Ellis-Don was complaining about --

Mr. Candy: Not at all, not a word.

Mr. Shibley: You hadn't heard --

Mr. Candy: Not a word.

Mr. Shibley: What was the first time you heard anything about their complaints?

Mr. Candy: When it was in the newspaper.

Mr. Shibley: I see. You hadn't heard of it in November, 1971?

Mr. Candy: No, I hadn't.

Mr. Shibley: All right. On August 28th there was a meeting, I believe, with yourself, Mr. Moog and Mr. McCallum. Is that correct?

Mr. Candy: I guess so if that's in the --

Mr. Shibley: It's part of the --

Mr. Candy: This is 1972?

Mr. Shibley: Exhibit 225 which is the -- I'm sorry, I will read you a memo from this file. It says: "Something Moog, We have to complete the agreement this week. I told him that except

Sept. 12/73
2.25 to 2.30 pm
DT

(Mr. Shibley)

for a few hours on Tuesday, I did not think you would be in this week, at which he nearly fainted. Says we must get the agreement done this week, without fail, and so on. Also asked me who, in this firm, would be dealing with the road closing? You had suggested you might get someone here to do it, but if you can't, then he would suggest Vernon Singer, because he would be good to do the work politically, too. Then Mr. Candy called with the same thought."

Did you call Mr. Houser or Mr. McCallum and speak to the secretary of either of those gentlemen and express to them the thought that is indicated by this memorandum?

I might tell you this is a -- the secretary's note of --
~~it~~ it is Miss Edith Plummer.

"Then Mr. Candy called with the same thought."

Mr. Genest: What's the exhibit number, ~~Mr. Shibley~~

Mr. Shibley: It's page 38 in the McCallum file,

225.

Mr. Candy: This is to do with the road closing on Orde Street.

Mr. Shibley: Yes.

Mr. Candy: And the problem there was that in the design --

Mr. Shibley: No, I am not interested in the problem. I am interested more in the fact that according to this secretary's note, you as well as Mr. Moog made the suggestion that Mr. Singer be retained to look after the road closing. Is that correct?

Mr. Candy: I never made any suggestion that Mr. Singer be retained. I never knew about Mr. Singer. I probably called about the road closing and I wanted that brought to a head and Mr. McCallum discouraged everybody.

Mr. Shibley: All right.)

~~Mr. Candy~~ ~~Edith~~ The same thought to which she is making reference isn't the thought that Mr. Singer should be retained --

Mr. Candy: No, No.

Mr. Shibley: -- because he would be good to do it.

Sept. 12/73
2.25 to 2.30 pm
DT

Mr. Candy: Oh, no, because my thought would be McCallum would be the one to do this.

Mr. Shibley: All right.

Mr. Candy: -- if we did it.

Mr. Shibley: Now, then, there is also a memorandum in that file on September 5th, part of which has been made an exhibit. I had to excerpt it. I will read it to you. "On Tuesday, the 5th, I had had a lengthy meeting with Houser in his office at which we went over all the points that he had noted from his reading of the papers, (general strategy! When problems arose, I would be told about them by him and I would work them out with Candy and with Moog.

~~The meaning, Houser, was not to take a hard line at any time because~~

(h-2408 to follow)

(Mr. Shibley)

He, meaning Houser, was not to take a hard line at any time because it was in Hydro's interests now that they had ^{we} made a public declaration of the deal to try and work out the proper deal and get the building constructed." Now did you give instructions at all respecting, I am talking about instructions to Mr. Houser and/or Mr. McCallum, that a hard line was not to be taken?

MR Candy: No. No.

Mr. Shibley: ~~MM~~ Pardon?

Mr. Candy: No, I never did.

Mr. Shibley: Was the circumstance that a public declaration of the deal had been made a factor which was weighing against your saying to Moog, when he reneged his deal as to the formula for costing the building and when he refused to include in the agreement any provision as to costs, was part of the difficulty of your position and that of Hydro that there had been publication of the deal?

Mr. Candy: No, I would say definitely not. That never influenced us in any way.

Mr. Shibley: So that when this -- you see, it says in this memorandum: "Now that they have made a public declaration of the deal". I am sorry. "He was not to take a hard line at any time because it was in Hydro's interests now that they had ^{we} made a public declaration of the deal to try and work out the proper deal and get the building constructed".

Mr. Genest: It says the "proper deal"?

MR Shibley: Yes. I understand. That's what I am talking about too, the proper deal with proper terms. Was that a circumstance affecting the position of Hydro and its counsel in terms of responding to Moog's position regarding the fact that he was not going to have this building costed but rather appraised ~~h~~ and that he wouldn't produce his figures?

Mr. Candy: No, I would say ~~not~~ not, Mr. Shibley. I don't recall that.

Sep 12/73
2.30-2.35 pm
V.H.

Mr. Shibley: I have no further questions. Oh, I am sorry, there is just one. There is evidence that you went before Cabinet in February, 1973. Now, Mr. Chairman, again you will have to help me in this respect. I don't know whether, when someone who is not a member of Cabinet goes before Cabinet, whether that is a privileged occasion or whether because they have brought some outsider into Cabinet, then ~~it is privileged?~~

Mr. Chairman: ~~Impossible~~ *It is*

Mr. Shibley: *It is privileged.* That ends that question! I have no other questions.

Mr. Allan: Well, Mr. Chairman, I have one question.

Mr. Chairman: Well, Mr. Renwick is next. But I would prefer you to go first, Mr. Allan, because you are generally short and Mr. Renwick is generally a little long, x so let's get your question in first. I don't think Mr. Renwick will mind.

Mr. Renwick: Thank you for those words!

Mr. Allan: I just wanted to get Mr. Candy's opinion regarding the type of appraiser that would be used at the time this appraisal is to be made. I wanted to ask him if Hanscomb Roy Associates in his opinion they are qualified to do that -- that is, if their qualifications would qualify them to meet what is set out in the agreement?

Mr. Candy: My answer to that would be yes.

Mr. Allan: Does the agreement definitely name a firm?

Mr. Candy: Yes, it does. But not ~~the~~ a different firm.

Mr. Genest: Chaffe, MacKenzie.

Mr. Allan: All right, thanks.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Mr. Chairman, as you said, I am likely to be a little bit longer than that!

Mr. Candy, ~~the~~ obviously the evidence has focused attention on the -- primary attention or at least significant attention on the relationship between yourself and Mr. Moog.

Mr. Candy: Yes.

Sep 12/73
2.30-2.35 pm
V.H.~~XXXXXXXXXX~~

M

Mr. Renwick: ~~also~~ in connection with the whole of this transaction from its inception right up until the end ~~of~~.

Mr. Candy: Yes.

Mr. Renwick: ~~also~~ indeed right up until now, so in a sense the points that I want to raise are related to making an assessment of that relationship because we are going to have to draw some conclusions from it.

Mr. Candy: Well, that's fine.

Mr. Renwick: But nothing that I say, I certainly don't want any comments of mine to be taken as conclusions of mine one way or the other. I am just trying to help myself and perhaps other members of the committee in assessing that relationship and making the kind of decisions that we are going to have to make. Some of my questions may appear far off from that particular point.

Mr. Candy: That's all right.

Mr. Renwick: They do in a sense come back to it.

One of the terms that has been used, I think in a relatively inaccurate way in the early days of this hearing was the talk about luxurious, that the bulding was in some way or another was a luxurious building.

~~XXXXXX~~

H-2409 follows

September 12th, 1973

2.35 - 2.40 pm

2409 - 1

AA

(Mr. Renwick)

~~defined about luxury what the building, in some way or other~~
~~was a luxurious building~~ and there was a question of the
relationship between luxury to cost and there was the ~~other~~
analogy to the car market which I forget ^{and} which wasn't particularly
helpful.

Now, it seems to me that the provision of office space
which is good, that is well lit, well ventilated, well heated,
proper access by elevators and all of those elements of the
building, it seems to me that it's not either appropriate or
particularly helpful to refer to those as luxury items.

Mr. Candy: That's right.

Mr. Renwick: That when we are thinking of a building
which Hydro will own thirty years from now and presumably, so
far as anyone can tell, although none of us will be around,
will likely continue to be occupied by Hydro ~~for~~ for another thirty
years or more after that, or at least be a valuable asset, that

Mr. Chairman: Don't cut Mr. Walker or Mr. Deans out of
that, Mr. Renwick.

Mr. Renwick: I was thinking of 60 years, but I ~~don't~~ don't
think many of us ~~will~~ will be around ~~at~~ 60 years. I may be but not ~~too~~
many others. We may be still here.

Mr. Genest: Continuously re-elected!

Mr. Walker: This committee may be still sitting!

Mr. Renwick: I'd like your professional, expert assess-
ment of what you consider to be luxury features in the ~~new~~
building, if there are any, and whether any of those features
could be considered to be luxurious in the sense that ~~such~~ they
are the kind of conspicuous elements which a public body should
not be expending public funds on.

Mr. Candy: And you are referring to this particular
building?

Mr. Renwick: Yes, I am referring to this building.

September 12th, 1973

2.35 - 2.40 pm

2409 - 2

AA

(Mr. Candy)

I think
Mr. Candy: ^AOne of the problems in the past ^Ajust if I may deviate for a moment from that ^Ain office buildings, as in apartment buildings, people have built buildings and not spent enough money, so that when somebody puts a building up next door, everybody moves out and moves next ~~door~~ and this man is faced with having to rehabilitate that, maybe within five years of building it, in order to get ~~the~~ people back ^Ain. Now, we have come to an area in our society whereby people are demanding things. I mean you wouldn't dare put up a building today without fully air conditioning a building. We have come to the open-office landscape, the concept of open-office landscaping, which is giving us much more ~~the~~ flexibility. Now as soon as you get to that, then you are into a ~~new~~ new lighting situation. You are into a new source of power. You are into carpets on the floor, for sure. You are into drapes instead of venetian blinds. You are into screens. You can't go half way. You are into plants on the floor as well. I mean, you can't do these things partially. If somebody says, "Well we will just do this, but ~~we~~ ~~we~~ won't do that", you might as well forget it entirely. You have got to go the whole way.

We build a lot more buildings for Hydro and we may, in some buildings, spend more money initially to obtain something which is as low as possible in maintenance costs. My idea eventually is to get a building you can wipe off with a wet rag and that's it.

Now, ~~this~~ ^{this} building here is covered in ~~vinyl~~ vinyl. All these columns are vinyl. The walls are all vinyl covered. That will last for years. If that wasn't on there, you would be painting that about every three or four years. A lot of buildings today are drywall construction just painted. People buy houses they think are ^{plastered} ~~plastic~~ and they are not; ~~they~~ they are drywall.

September 12th, 1973

2.35 - 2.40 nm

2409 - 3

AA

(Mr. Candy)

I think in this building, lighting, as far as office landscaping is concerned, this size of light is not adaptable because there is too much bounce off that light. You have got to reduce your hard surfaces as much as you ^{can} get as much acoustic value into that ceiling. Now, the ceiling we ~~originally~~ had specified had a 0.85 noise-reduction coefficient. We are getting a ceiling now with a 0.90 or better, which is a much superior ceiling.

2410 - 1 follows

Sept. 12/73
2:40-2:45 pm
C.B.

(mr. Candy)

~~Now of about 0.98 or better which is a much superior building.~~

When you start removing partitions and having open office landscaping you've got to put in acoustics, everything you've got to think of. You may have to put panels on the wall which are acoustics.

I don't really think there is anything in that building that we are putting in that would be considered by today's standards a luxury. Now if you get to art objects or murals, I say in the paper the other day, ~~a~~ a building in Ottawa where the government I think figures ~~that~~ ^{it} ~~septa~~ ⁵ one per cent of the cost of that building in art. I think ^{this} ~~is~~ something that we should be encouraging and I think it has to be very well selected to make sure that you get something that will stand the test of time and doesn't look fine today but five years from now it's passé. I think that when you get into things like that you've got to get the properly qualified ~~xxxx~~ people to select these things. But I think this adds to the culture of the whole building.

When you come to elevators, in our building we are going to have quarry tile floors in elevators. Now, ~~we have~~ ~~in~~ in elevators, we've tried vinly asbestos tile, we've tried carpets, we've tried rubber tile, we've tried vinyl tile, and a floor in a elevator is one of the hardest things to maintain. We are continually changing them. We are putting in quarry tile now which will stand up for the life of that building. The back wall of the elevators is precast concrete. The side walls which were to be in wood I have changed and made out of arborite, like this, or formica, ~~or~~ ^a plastic laminate to make them as indestructible as possible. You can put up steel elevators and you can paint them, and people scratch them. ~~There are~~ ^{There are} the elevators in Ottawa, I was looking at them in the CBC building ~~that have~~ ^{that have} got carpet on the walls and they've got the type of carpet where the pile ~~is~~

Sept. 12/73

2:40-2:45 pm

C.B.

(Mr. Candy)

~~the~~ ^{and} where the buttons are, people play around, ~~and~~ they loosen one and they pull it and it's all coming apart.

But ~~consequently~~ in looking at materials, we look very strongly at materials now from a fire resistance standpoint and fireproof standpoint. Carpets are a very important thing. We do a lot of study on carpets, and we may pay a little more money for a carpet which is a polyethylene carpet so that if you drop a cigarette butt or a match or something, it just burns out. It melts a little hole, but not something that just takes off.

So in your washrooms, ⁱⁿ some of the buildings we went through the other day, you look in a ~~washroom~~ washroom and you see petitions coming right down to the floor, you see water closets that are floor mounted. Now these things can be wall mounted, your ^{partitions} ~~partitions~~ can hang from the ceiling, you can go in and wash the floors. I personally never use terrazzo in buildings anymore. We won't have a square foot of terrazzo in this building, terrazzo is very hard to maintain. If you don't maintain it, it goes dead; you've got to keep putting a sealer on it, ~~and~~ we use tile. The two and one quarter ⁶/₈ Calvertex or something like that for tile floors and tile walls. ~~There's no marble in the building.~~

We haven't got any marble in the building, we have some exposed concrete, ~~I think that~~ I don't consider what we have in that building as being luxury in any sense. But I do consider that what we have in there is a building which will be quite easily maintained and quite rich in ~~appearance~~ appearance, in texture of material.

(Mr. Candy)

For instance, if you take this ~~kind~~^{vinyl} on the wall, there are all kinds of vinyl on the market, there are all kinds of grades, there are all kinds of textures, and the selection of that can make quite a difference to your building. ~~Carpeting is a~~
I remember looking into this carpet set-up, and one thing that you do save in carpet over the years is the maintenance. Now, if you take rubber tile, vinyl asbestos tile, your capital cost is about half the cost of carpet and you can put that in at half the cost, but ~~it's~~ over a period of ten years, you'll save many times the cost of that in maintenance with carpet over the other. You've got to strip ^a vinyl asbestos or a rubber tile floor about once a month. ~~It~~ I looked into that one time and costs were around 80 cents a square foot per year to maintain vinyl asbestos tile. Carpets, I think, are something like 20 cents, and you may shampoo them once a year or you may not. But it depends on the carpet that you select. The colour of the carpet has quite a bit to do with it, and you can get into an area in colour whereby if it is too dark it is going to ~~absorb too~~^{absorb too} light, if it is too light it's going to show the dirt. There is ~~quite a knack in selecting the proper appropriate type of carpet, and a carpet that is on-~~

H 2411 to follow

H-2411-1

September 12, 1973
2:45 - 2:50 p.m.
B.G.

(Mr. Candy) →

~~...and there is~~ quite a knack in selecting the proper, appropriate type of carpet and a carpet that is non-directional, so that if you have to cut a whole in the carpet you don't have to get a ~~different~~ piece that fits that pattern, you can put it in anywhere and it's a ~~a~~ non-directional type of design.

We purposely bring our outlets, power and telephone, down from the ceiling, ~~and~~ because we don't want to cut the carpet in the first place, and in the second place, in our building at 77 Bloor, my whole Department could move upstairs and the upstairs move downstairs over-night. There is nothing ~~that~~ that is nailed ~~down~~ down, there is nothing you have to touch. ^{It means} ~~Immediately~~ you just pull out the plug and take the ~~panel~~ off, and if you have a hole in that panel, you just get another panel and set it in. And the big thing ~~to~~ day is ~~flex~~ flexibility. We are always changing.

Back in the days when we used partitions we seemed to get them up and stand back and wait for the paint to dry and then tear them down again. And, you know, this is literally what happens. And so that capital cost wise I don't ~~think~~ think there is an awful lot of difference in the office landscaping approach as ~~to the~~ against the partitioned office. I think it may be a little more expensive, but the flexibility that you get ~~and~~ and when people walk into that, you know, your first impression is that this is pretty luxurious, you know, ~~that~~ it's pretty expensive, ~~but~~ but it isn't really. And I think that it adds tremendously to the morale of the employees; ~~and~~ and I used to work in the building at 250 Bloor and we had partitions and I worked in a ~~tin~~ tin box, you know, with metal partitions and I was doing office landscaping for some of our other departments ~~well~~ well, down at 620 ~~University~~ ~~University~~ I did some in the Engineering Building, and I wrote articles on this and I kept promoting it and promoting it, until all of a sudden I had to move to 77 Bloor. I kind of thought, do I really mean what I say or not, ⁷ ~~and~~ and I moved into this, and I wouldn't

September 12, 1973

2:45 - 2:50 p.m.

B.G.

H-2411-2

(Mr. Candy)

of it, and
want to move out, ~~but~~ I think it's fine, ~~but~~ I think that you have
much better control of your staff; you've got all the privacy you
need. But if you walked into 77 Bloor and you walked around, the
average ~~the~~ person would think, Well, that's pretty ~~luxurious~~ luxurious,
but it's a matter of getting the most for your money and it's a matter
of providing flexibility for the future, because we are all built on
change nowadays.

We change the organization and we've got to change people,
and change locations. And if you can just pull out a couple of plugs
and move the furniture over and change the screen around, it's a much
more simple operation and you don't lose that - ~~you~~ ^{You've} been in the ~~boxes~~
^{offices} [^] where they are putting up partitions or taking them down, the office
is disrupted for a week, You know, people are tramping over things
and painters are coming in at night, So to answer your question
directly, no, I don't think that we have anything in that building
which is going to be considered a luxury. I think that we are putting
in the necessities to cope with the future changes which will take
place.

Mr. Renwick: But I was interested in the latter part of
your remarks ~~because~~ because I have always tended to assume that
buildings were for people and that there will be a large number of
people over the next ~~thirty~~ thirty years who will spend a substantial
part of their life in that building. Now, from that point of view,
is there anything luxurious about it, or do you simply call it quality
office space in which people are going to live a substantial part of
their lives and work?

Well,
Mr. Candy: ~~Yes~~ I think you've got to make it so that they
hate to go home at 5 o'clock.

Mr. Deans: Something like here.

Mr. Candy: But, you know, there are institutions that you
can think of that you go into where everything is painted green, you
know, and it's got a green linoleum floor and ~~sealed~~ ^{sealed} doors and ~~as~~ ^{as} obscure
glass in the partitions, and you know, it's like a jail, You know,
you go in and lock yourself up ^{in that} for eight hours a day.

H-2411-3

September 12, 1973

2:45 - 2:50 p.m.

B.G.


Mr. Renwick: Now, there is one other element, that is the prestige element of the building, from its aesthetic appearance from the outside and the landscaping, if that's the right term, that is going to be done around outside, but I think we can make our own assessment about ~~that~~ that. We have seen the pictures of it.

Mr. Candy: I think when you are assessing that you have got to think of what we are doing, what contribution we are making to University Avenue, which is the ~~the~~ best street in this city; and ~~and~~ in what we are doing to involve the people in Hydro.

Mr. Renwick: ^{Now,} ~~Yes~~ if I could ask you to look at Exhibit 211 again. No, is it 211?

Mr. Finlayson: July 18?

Mr. Genest: What's that one, Mr. Renwick?

Mr. Renwick: No, that's not the one. I think it must be 148, perhaps, 

(Tape H-2412 follows)

Sep 12/73
2.50-2.55 pm
V.H.

(Mr. Renwick)

~~There is one -- I think it must be -- perhaps~~ It's the one in which your letter to McCallum about the cost

Mr. Finalyson: Eighty-nine.

Mr. Renwick: Eighty-nine?

Mr. Candy: ^{You mean} The cost ~~of~~ and values of this?

Mr. Renwick: Yes. Obviously one of the points which has come up here, which we are going to have to make our assessment about, is the question of whether or not the cost determination or appraised value is a significant distinction as between what Hydro could have got and what they did get. Now I notice in the last part of your letter to Mr. McCallum that, in the last paragraph but one, in the very last sentence, you state: "It is not a * difficult building to appraise as it is a very repetitive design on the floors above grade and much of the floors below grade, such as the finishing of all the commercial area, are not included in any event."

Now, do you consider that it was a significant adverse effect on Hydro not to have been successful with something along your lines of ^{the} cost assessment as distinct from the question of appraised value as a method of arriving at the calculation to be made to determine whether or not there is to be a reduction made in rent? I am saying this to you apart altogether from the discussion with Mr. ^{McCallum} ~~Callum~~ about the matter.

Mr. Candy: Are you talking about the context ~~of~~ today or in the context of last year?

Mr. Renwick: ~~NO~~. What I am talking about is not in terms of dollars. I am ^{talking} ~~talking~~ about -- I am going to refer to Mr. McCallum. I am referring to Mr. McCallum's concept without being argumentative about what appraised value would include if the matter came for decision in his judgment before some body that was capable of defining that definition.

Sep 12/73
2.50-2.65 pm
V.H.

(Mr. Renwick)

Now to what extent is the coming to appraised value adverse to Hydro and to what extent would Hydro would have been better protected under the kind of definition set out in your letter to Mr. McCallum having regard to the note -- the sentence which I have referred to, ~~it~~ ^{which} would indicate that you don't consider the appraising all that difficulty

Mr. Candy: Well, of course, if you talk to, for instance, real estate people, the first thing they'll say is "I don't want to even see the building, tell me what the rent is and I will tell you what it's worth."

Mr. Renwick: No, I am not talking about that. I am talking about the fact that you did not reach agreement that it was to be market, you did not reach agreement that it was to be cost, and the phrase which you have used is appraised value and the definition which I am prepared to accept for our purposes is the definition made by Mr. McCallum.

Mr. Candy: Yes. Well, I thought Mr. McCallum put it very well. But I do think when we talk about replacement cost, historically in the same period that that would be constructed. Now when I am talking about Hanscomb Roy here, every building,

Mr. Renwick: Mr. Candy, I am not. My question is very precise. What did in your assessment in the bargaining process, and recognizing that there are all sorts of elements that go into negotiation and without passing any judgement about whether you should or should not have won the argument, what is the adverse effect on Hydro in your judgement if it can be expressed to having appraised value as distinct from cost as defined in your letter to Mr. McCallum? What did you lose?

Mr. Candy: It's a pretty hard question. I think that -- I guess, what we lost is a clear understanding by everybody as to ~~exactly what it means~~.

H-2413 follows

H-2413-1

(Mr. Candy)

~~Express what we lost as a clear understanding by everybody as to~~
exactly what it means.

Mr. Shibley: You'd lost about a week had you?

Mr. Candy: No, that is not a very good answer I'll admit,

Mr. Allan: I think it was a good answer.

Mr. Candy: You see, in Mr. McCallum's explanation of that, which as I said I thought was a good explanation, which is replacement cost, every building which is built is in a sense costed before it is built. That is, contractors figure a job and they say I'll build that building for \$40 million. Now that is a price and he is doing it competitively. People like Hanscomb Roy can do the same thing as a contractor. And Hanscomb Roy from the drawings and from the specifications which they will have on or before the completion of this building, are capable of making I think, quite an exact estimate of this building. What I was really trying to tie it to there is a firm like that. Now the other people are appraisers. What we are going to have to do is to get the terms of reference across to the appraisers when that takes place, and I think if we have an understanding of that, I think that if I were in ^{the} Chaffee company and were involved in doing this I would dig up all the information I could on the cost of the building, ~~and~~ even from H anscomb Roy, or get the drawings of the building and do everything I could to come up with something which is as close as they can get to cost.

Mr. Renwick: I agree with Mr. Allan. ~~That~~ It seems to me that that is a very accurate statement of what was lost to Hydro...

Mr. Candy: Yes, and I think this causes a confusion amongst everybody's mind.

Mr. Renwick: All right. I assume from the position which Hydro takes, whether or not the result will follow is another matter that the extent of that adverse effect will be countered to some extent by the ongoing work of Hanscomb Roy.

Mr. Candy: That's right.

Mr. Renwick: And the quantity survey work which will be part of the overall checks.

Sept. 12/73
2:55 - 3:00 pm
CA

H-2413-2

Mr. Candy: Because I am personally still working on the basis of cost. I am working with Hanscomb Roy, and this is what I am following through.

Mr. Renwick: Now I want to ask you specifically whether or not Mr. McCallum gave you any clear cut indication that he was unhappy with the elimination of cost? I don't mean did he categorically say you are operating against my advice; ~~did~~ did he communicate to you that this was something less than he would have liked to have had?

Mr. Candy: Oh yes, I would say yes. I would say we were both pretty much of the same mind in that situation.

Mr. Renwick: How did you lose out?

Mr. Candy: You just can't win everything I guess. I mean you can go so far and I think in the end that, as I said, Mr. McCallum was saying to the Commission you know that it is up to Hydro, and pointing at me, to take the responsibility of ensuring that Hydro gets a \$34 building.

Mr. Renwick: I think that is all right. I think we have explored that far enough. If I could just move on to the next matter. Now these perhaps relate somewhat more to that, although the others did too, ~~xxxx~~ specifically to this relationship between you and Mr. Moog. A substantial part of the evidence would indicate that whatever terms, polite or otherwise are used, depending on one's value placed on the word salesmanship that Mr. Moog was selling all the time.

Mr. Candy: Oh yes, I would agree.

Mr. Renwick: Throughout the operation. And the questions which of course ~~are~~ ^{is} significant, ~~and~~ ^{is} the extent ^(which you) to bearing the brunt, and being isolated, if I may use that ~~time~~ ^{term}, bore the brunt of that, the extent to which you were influenced in a way which could be concluded was adverse to Hydro's interest. Now I am not making any judgement about that. I am simply saying the circumstances.

H-2414-1 follows

Sept. 12/73
3.00 to 3.05 pm
DT

(Mr. Renwick)

~~Mr. Renwick's interests. Now, I am not making any judgement about it.~~
I'm simply saying the circumstances. I think it is fair to say that whatever the reasons, whatever all the factors were, you were left out there to negotiate with Mr. Moog. You had the continuing on-going relationship. There was some back-up but basically that was the relationship. As I understand it, when Mr. McCallum came into the picture, you and Mr. McCallum for practical purposes carried the ~~the~~ brunt of the negotiations and so on. Communications were between you and Mr. Moog. Mr. Moog has categorically asserted that he never knew anything about what went on inside Hydro. You have categorically asserted that you did not allow Mr. Moog to influence what you had to say about Hydro, but the point which the evidence seems to make clear, that's been brought out, is that there are substantial areas in which the ~~the~~ influence of Mr. Moog on you did in fact affect the judgement of Hydro in their assessment of it.

Now, I am not going to again enter into an argumentation. I think there's a sufficient coincidence of expression in documents throughout which would indicate that it brushed off and influenced - distorted, if you want - the assessment of the problem.

Now, I would like you to make some personal assessment now of your feelings and the state of your mind about how you think you are going to come out of this deal having had this on-going relationship with a very persuasive person such as Mr. Moog in the final result of this building.

Mr. Candy: Let me say one thing on that, that this building was not the only thing I was doing. I mean, we have a large ~~large~~ building programme. I have a staff of about 40 people. I am doing a lot of other buildings, and I am dealing with a lot of other contractors, and I have other people putting sales pitches - ~~you know~~. I think in the context of this inquiry, this may appear to stand out more ^{To} ~~in~~ in my own mind ~~stands~~ it doesn't stand out that far. That is, ~~stands~~ I am doing this every day with all kinds of people. I think that Mr. Moog and I were moving in the one direction but in different areas.

I was very concerned and anxious to get this building

Sept. 12/73
3.00 to 3.05 pm
DT

(Mr. Candy)

built. He was all the time pressing me ~~about~~ about the ~~costs~~ costs going up ~~and~~ and when ~~we~~ ^{well we} ~~are~~ going to do something, we have got to get going. ^{??} He was interested in the financial side, and as I said every day he would tell me we were losing \$10,000 ~~because~~ because of escalation. ^S So I think that I had a goal in mind, as far as Hydro were concerned, Mr. Moog had a goal in mind as far as Canada Square were concerned. ^B But I think that I have been in the business long enough and dealt with enough contractors to ~~not~~ ~~be~~ not be influenced to any extent that would jeopardize Hydro's interest in this thing.

~~Yes~~, Yes, I've been impressed with Mr. Moog's approach to this thing. ~~I~~ ~~my~~ My opinion of Mr. Moog ~~subsequent~~ subsequent to signing the contract hasn't changed from prior to that. I ~~mean~~ mean there are some contractors ~~that~~ that ~~are~~ going to give you the moon until you sign on the dotted line and then you never see them again; ^{It's} It's a different thing. ^{But} But ~~to~~ to be honest and to be fair to Mr. Moog, I haven't experienced that, and I find that Mr. Moog in Canada Square is the man that runs Canada Square and when I get down to items of things where I want concessions or I want to get something additional to what we have, Mr. Moog is the only one to talk to, ~~and~~ I think that Mr. Moog really has a genuine interest in putting a good building on that corner. You see, there are two types of developers: there's the speculative type and there's nothing wrong with ^{the} speculative type. They are in it to make money and to get the most money out of that that they can for the amount of money they invest. And then there's the custom type of ~~the~~ builder who does it for particular clients, and Mr. Moog I think is more in that category than in the speculative.

(H-2415 to follow)

Sept.12/73
3.05-3.10p.m.
B.A.

H-2415-1

(Mr. Candy)

~~my regular clients and Mr. Moog, I think, is more in that~~
category than in the speculative type.

So that, I think, with Canada Square we probably get the advantage of a more personal interest than we may do in an organization where, after you sign a contract, you are passed on to the office manager, or somebody else, and that is it. I don't look upon the relationship as being out of the way, considering all my other interests in Hydro. I have a staff who have a lot of responsibility and they are looking after contracts and they go as far as they can go. When they get to things that can't be solved that is when I start negotiating myself, but they go as far as they can go, and I don't think it ~~is~~ has jeopardized our position at all, as far as that is concerned.

Mr. REnewick: Let me try and pinpoint. This is only an isolated instance, but it has stuck in my mind as the kind of problem, ~~where~~ there are other, ^{but} in varying degrees, ^{there} is the same kind of emphasis throughout some of the evidence relating to yourself and Mr. Moog. I use this exhibit, assuming my recollection is perfectly correct on it, to highlight exactly what I mean, and that ~~is~~ is your memorandum to file on the day the Commission approved of the transaction, which was July 19, 1972, if my recollection is right. That memorandum contains the flat statement, ~~to~~ your file, it wasn't circulated to anybody else, so that it reflected what you put on the file, ~~that~~ that you had told the Commission that Mr. Moog's financing was to be all \$40 million, ~~exclusive~~ in Swiss francs. Now, that exhibit is Exhibit 85, ~~Remember this point~~ so that there won't be any misunderstanding about the point I am making.

This is on July 19, ~~the day~~ you had been to see Mr. Moog, the day before, July 18, the Commission meets on July 19 to make its final decision on the matter, ^{you have} and I advised the commission that Canada Square will obtain their interim financing up to

Sept. 12/73
3.05-3.10p.m.
B.A.


(Mr. Renwick)

an amount of \$40 million from the Bank of Montreal, and that Canada Square now advises that they anticipate all of their long-term financing will be obtained from Switzerland."

The evidence comes through to me again, ~~and~~ without being argumentative, that in fact, there wasn't going to be any Swiss financing at that point in the game, or the evidence comes through to me that way. I would be very much concerned, if, in a situation of that significance, the person with whom I was dealing had led me to believe a statement as inaccurate as that. Again, I am not being argumentative. I am suggesting that that is a true ~~xxxx~~ recording of what you believed was conveyed to ^{you} by Mr. Moog.

Mr. Candy: That's right.

Mr. Renwick: Now, that, in my mind, highlights the kind of problem that we, as a committee, are faced with, as to whether or not we can have any assurance that we are going to get the kind of building, of the quality that was bargained for, because there appear^{ed} to be, ~~under~~ call^{ed} salesmanship, a continuous pressure. I know that in the game of salesmanship, there is a certain latitude of strict accuracy, but, when the chips are right down at the last minute, ~~xxxxxx~~ I think one has to tell it the way it was. That is only one incident of a number and that bothers me as a member of this committee.



(Tape H-2416 follows)

September 12th, 1973

3.10 - 3.15 pm

2416 - 1

AA

~~(Mr. Penwick)~~

~~Mr. Penwick: That is only one incident of a number and
it is not a member of this committee.~~

Mr. Candy: I ~~think~~ think, in the long run -- of course, when the building is finished, we have got to settle this business of cost before we can sign the lease. We haven't signed the lease yet. We have signed an agreement.

Mr. Renwick: Of appraisals - this business of appraisals -- of the cost.

Mr. Candy: No, the lease of the - the building lease itself, you see?

Mr. Renwick: Right.

Mr. Candy: And until we have signed that building lease, he hasn't got any mortgage money. He hasn't got anything. Now, if for some reason that the thing went sour and we said we are not going to sign the building lease, he is sitting there with \$5 million worth of building and what's he going to do with it? So that is the lever we have really to ensure we get what we are paying for. We haven't - we haven't signed ourselves off. We are not party to his mortgage commitment. So that we still have this and that is a very heavy club at the end of the line and this, of course, is the only thing - well, is the major thing that we will use in order to get a settlement at that time and to make sure that this is taken over properly and that the building is completed.

Mr. Renwick: ^{All right.} Now, again, I want to overstate this so that there will be no misunderstanding of what I am talking about. I ~~will~~ get the impression that you, yourself, if ~~the~~ the total ^{process} decision had been yours, would have selected Canada Square without a competition. That you would have ~~....~~

Mr. Candy: Being ~~....~~ all right, all right!

Mr. Renwick: ^{is} Just let me finish. As I say, I am overstating it. Let me overstate it that way. That you had sufficient confidence. You were anxious to get the building built. For whatever the ~~reasons~~ reasons, you were prepared to

(Mr. Renwick)

go with Canada Square.

Do you have any - can you help me pinpoint the period of time in which, in your mind, the decision was made to call for other proposals?

Mr. Genest: Mr. Renwick, I think, with respect, we ought to break down your question, because any answer given by Mr. Candy now involves an acceptance of your premise. And you say you are overstating it. I ask you respectfully, sir, to put the first part of your question as a proposition to Mr. Candy and go on from there.

Mr. Shibley: I agree.

Mr. Renwick: Well, I'll allow my experts to phrase the question, for me. *Mr. Shibley?*

Mr. Genest: I'd like an answer to the first one.

Mr. Renwick: I'll have another crack at it. The evidence would appear to indicate to me that Hydro was embarked upon the road which would have led inevitably to the selection of Canada Square to do this job until something else intervened and, in one way or another, led to an invitation or request from certain very carefully selected other developers to put in a proposal. Is my assessment of that correct and ~~_____~~

Mr. Shibley: No. No. That's not correct.

Mr. Renwick: ~~_____~~ can you tell me at about what time you were conscious of the fact that there was going to have to be a call for proposals from others?

Mr. Candy: I have been in the Hydro 28 years. I call for a lot of tenders. We advertise tenders in some cases. If it is a small job, we have selected bidders. ~~When~~ When we advertise, we advertise in the area where that job is being built if we possibly can. I have never been under ~~any~~ ~~any~~ illusion, at any time, that we had to get competitive prices. I was never, at any time, under any illusion that we could just go out and hand that job to Canada Square.

September 12th, 1973

3.10 - 3.15 pm

2416 - 3

AA

(Mr. Candy)

Now a private corporation can do that. The ~~Star~~ did it. But we can't do that and I know we can't do it.

% Mr. Renwick: Well, had you ever been involved in a call for proposals in a job of this size in Hydro before, as distinct from the traditional method of calling for tenders?

Mr. Candy: No.



2417 - 1 follows

Sept. 12/73

3:15 - 3:20 pm

C.B.

~~(Mr. Renwick)~~

~~the job of this size in Hydro before as distinct from the traditional method of calling for tenders~~

~~Mr. Candy~~ not of this size. But everything we do, we've got to be competitive in anything we do. I would never have gone out and just handed that kind of job, I mean the criticism of that would have been much worse than we've got now.

Mr. Finlayson: Jesus Christ!

Mr. Candy: Well it would.

Mr. Genest: That's hard to imagine.

Mr. Candy: I mean we just couldn't live with that.

Mr. Renwick: Oh I'm sure you'll live through this, I'm sure you would have lived through ~~and~~ others.

Mr. Candy: I'm very serious about that. I'm very aware of that. We have jobs, some of our powerhouse jobs, somebody gets a job proportion of a power house and then we are going to duplicate it.

Mr. Renwick: All right, I don't need it, because if you don't accept my assessment of the evidence I'm not asking you to.

Mr. Candy: No, all right.

Mr. Renwick: I've got to assess it, then the question is a meaningless question to you.

Mr. Candy: Because I would have never been party to just handing that job to somebody. I certainly wouldn't have taken the responsibility for that.

Mr. Shibley: Mr. Renwick I think it might be an interesting question to know whether after the submissions were made, having regard for the fact they were made as of January 24, they were all in, as quickly as February 1, you did a memorandum recommending the selection of Canada Square.

Mr. Candy: Yes.

(Mr. Shibley: And no follow-up with the other three at any time?

Mr. Candy: Well this follow-up, you'll notice we took about five months to settle this thing. I know this follow-up seems a bit strange to some people, but it was a matter ^{of} did we have enough information to analyze it or didn't we. I know this is debatable now at this stage. But I felt at that time that we did and I think our financial people certainly examined it from the financial side. No when we went into this and we got competitive prices at that time under those conditions, we didn't go into that as an exercise.

Mr. Shibley: Well if Mr. Renwick is through, I've got a couple of things I've been asked to ask you about. One is, Mr. Tamblyn gave evidence last evening, are you acquainted with Mr. Tamblyn?

Mr. Candy: Yes, very well.

Mr. Shibley: How many years have you known him?

Mr. Candy: I think it is probably since 1965.

Mr. Shibley: Have you worked on a number of projects with him?

Mr. Candy: We have retained him on one or two of our jobs, and I had him of course on the original building.

Mr. Shibley: Yes, will you comment please upon his qualifications.

Mr. Candy: Well I think that he's one of the outstanding mechanical engineers in Canada. One of the reasons that I have retained him the past, is that I look on Bob Tamblyn as a man who does a tremendous amount of research and travels around the country and gets to know what's going on.

Mr. Shibley: The other question, your counsel asked me to ask you to comment upon the \$34 per square foot base price. I'm not sure that you haven't already ~~canux~~ covered the topic in response to Mr. Renwick. Mr. Genest are you interested in having it pursued further?

Sept. 12/73

3:15 - 3:20 pm


C.B.

~~Mr. Genest:~~ ^{*we are going*} Well I think ~~in my mind~~ to go into the pro-rating process with the financial witnesses and I thought it might be useful for the - I think some of it was covered some months ago when Mr. Candy was in the box. I don't know if it was covered clearly, I don't know if the committee have clearly in mind what Mr. Candy's thought processes were and how he arrived at the \$34 and how that came to be fed into the pro-rating process.

Mr. Shibley: If you feel....

Mr. Genest: I thought if ^{*you're*} ~~in~~ going to be dealing with that with financial witnesses, my understanding is that they acted on assumptions given to them by Mr. Candy, and that it would be useful for the committee to have that in mind.

Mr. Shibley: Mr. Candy can you in point form, without too much elaboration, give the assumptions upon which the financial people of ~~Hydco were proceeding when they...~~



H 2418 to follow

Sept. 12/73
3.20 to 3.25 pm
DT

(Mr. Shibley)

~~elaboration give the assumption upon which the financial people of~~
Hydro were proceeding when they adopted the \$34 as the benchmark for this building.

Mr. Candy: I don't know as I can explain the mechanics of doing it, but I can explain the reasons.

Mr. Shibley: Yes, just the reasons, point by point, though, will you because I don't want to drag this out. Mr. Genest has particularly asked me to ask you about this.

Mr. Candy: Well, the \$34 of course, as I explained before, is based on the previous building which we had designed and had priced ~~at~~ by Hanscomb Roy at \$29.73. The escalation in ~~Windsor~~ '70 and '71 was about 10 per cent each year. ~~At~~ Actually there was a total of 19.6 per cent, so I added 20 per cent to that. This brought me up over the \$34, even without design fees and our interim financing but knowing that building and knowing that there were certain things about that building which were more expensive, I had to make a judgement in that, and I came to a conclusion that the \$34 figure was the minimum that we could accept as being a standard of quality for our building.

Now, as regard to the pro-rating setup,

Mr. R. G. Hodgson: Before Mr. Candy leaves that, there is a memo notation that \$36 per square foot on the Toronto Real Estate Board ~~is~~

Mr. Candy: Yes.

Mr. R. G. Hodgson ~~is~~ memo, and that was for buildings of quality of the type that you were thinking about, Mr. Candy?

Mr. Candy: I just wonder if it might be of interest if you had these documents which would help explain the Toronto Real Estate Board's setup. ~~It~~ This states just exactly what's included and you are quite welcome to those.

Mr. Chairman: Are you finished - ~~Mr. Hodgson~~?

Mr. R. G. Hodgson: Yes, that covered the point I wanted to make but there was a notation in the memo to that effect. ~~I just wanted to ask Mr. Candy about this.~~

Mr. Chairman: Mr. Deans.

Mr. Deans: ~~I just wanted to ask Mr. Candy this.~~ I

Sept. 12/73
3.20 to 3.25 pm
DT

xMx

(Mr. Deans)

think perhaps, Mr. Chairman, I will wait until Mr. Candy is finished with his explanation before ~~we~~ I think it would be unfair to interrupt and I will wait until he is finished.

Mr. Candy: All right, there is just one thing I want to say about the pro-rating process. As I said before, some developers are custom developers and some developers ~~are~~ are speculative developers. Now when we put the specification out for ~~the~~ this building, obviously it was not sufficient for an organization like Ellis-Don, who are contractors, ~~and~~ ^D people like Ellis-Don are accustomed to figuring a building from complete plans and complete specifications and all Ellis-Don does is let sub-contracts and put that building up. He doesn't finance it or anything. He puts that building up according to those drawings and specifications.

out

When you are coming to a developer, you can't put/a specification which is going to cover everything. We don't say in there where that building is going to be built out of plywood or silver ~~we~~ ^{So} we attempt to indicate the major items that we require in that building and the rest of it is what they put together themselves based on the kinds of buildings they have been building ~~so that~~ I think it was suggested at one time that why didn't we tell everybody that it was going to be a \$34 building and let them figure on that. You can't figure that way. You can't set a price and then design to suit the price. If you have six different ~~architects~~ architects doing that and then took those drawings and had them figured by contractors, they would all come up with different prices. You just can't do it that way. So if you take the speculative builder who is used to building a certain class of building which he thinks is good enough for Hydro, you are better to leave him in the area that he knows something about and let him figure on that basis. Then, when he comes in with that, ~~we say~~ then he's competitive with similar developers who are working on that basis. ~~Then we say~~, that's not a good enough ~~aa~~ quality for us. ~~xMx~~ We want a better quality building. So then the situation that I put to Mink and our financial people was ~~we~~ let's try and equate them on a common ~~denominator~~ denominator. Let's bring them up to some kind of demoninator

H-2418-3

Sept. 13/73
3.20 to 3.25 pm
DT

(Mr. Candy)

and then look at them. Now, we can go back to those people. I mean if this worked out that one of them was a better deal than the other and ~~we could go back to those people and say~~

(H-2419 to follow)

Sep 12/73
3.25-3.30 pm
V.H.

(Mr. Candy)

~~I felt that one of them was a better deal than the other and~~
~~we could go back to those people and say, "This is~~
what we want, this is the quality," they will hire architects,
they can design the building to that quality, but we have the
right to get that quality. So it was really a process of
keeping them in the area in which they are experienced. Now
I took the figures that I used to get the \$34 from a building
that we had already designed and had already completed. I
didn't pick that out of the air by walking through somebody's
building. We had figures to prove this thing and that's what
I did with that one.

Mr. Shibley: Well, Mr. Candy, just on that point,
did you give that figure to Mr. Moog?

Mr. Candy: Now, I did not.

Mr. Shibley: It is just a coincidence that his
proposal was based on the \$34 building?

Mr. Candy: That's right. That's right.

Mr. Deans: Mr. Candy, are you sure that at no
time ...

Mr. Candy: At no time *did I discuss \$34.*

Mr. Deans: At no time were those figures ever
discussed?

Mr. Candy: No. No.

Mr. Candy: I never ...

Mr. Deans: At no time *did* you ~~never~~ discussed what it
was going to cost to build the original building?

Mr. Candy: Oh yes, everybody knew that. We all
knew that. I mean ...

Mr. Deans: Let me just take you by stage, for a
moment because that is what I was going to ask you. When
Mr. Moog was discussing with you the original building and
he said he didn't want to build that, at that time no doubt,
you discussed what kind of value that building had in terms
of dollars.

Sep 12/73
3.25-3.30 pm
V.H.

Mo, let
Mr. Candy: ~~Yes~~ me say this. Every developer, including the other developers, had available to them Hanscomb Roy's sixth report, which is the final report on the cost of that building, which is an itemized report. When Mr. ~~A~~ Zwig's man was in, as he said, for a day and half, he had the estimate of that thing.

~~_____~~

~~Mr. Candy:~~ Mr. Deans: Yes. I am not suggesting, I am not even asking if Mr. Moog was the only one who knew at the moment.

Mr. Candy: Okay.

Mr. Deans: I am concerned though, in going back through your discussions, the early discussions with Mr. Moog prior to the time that anyone else was involved or for that matter was even being considered, Mr. Moog indicated that he had discussed with you that building.

MR. CANDY: That's right.

Mr. Deans: And had indicated to you that he had no interest in building a building like that.

Mr. Candy: That's right.

Mr. Deans: In looking at the building it would be apparent to me that he would ~~not~~ either want to know or have access to what the appraised -- not the appraised value but the value per square foot of building would be on that building. Now, in your discussions, given that this was some time later, this was some time after that building had been designed and had its value appraised, was there never a ^{CU} discussion about the fact that costs, of course, have risen since 19--whatever it was, ~~1969~~ ⁵⁹ or something; well, it was 1969. 1969? 1968?

~~_____~~

Mr. Candy: The end of '69.

Mr. Deans: Okay. ~~That~~ During the course of your discussion with Mr. Moog, after ~~having this conversation~~ and he had quickly determined what that building was worth, ~~then~~ ^{CU} discussing with you he would very easily know that you didn't expect to get the building at that rate since that ^{was} some time previously,

Sep 12/73
3.25-3.30 pm
V.H.

(Mr. Deans)

that you understood building costs had risen, ^{that he} and ~~he~~ wouldn't have to be a ^{genius} to know that they had risen about 20 per cent, and ^{he} ~~you~~ could very quickly then come to the conclusion, On the basis of having had fairly extensive discussion with you over a long period of time, that you were thinking, without you ever telling him, that you were thinking in the area of \$33 or \$35.

Mr. Candy: I hadn't really made up my mind at that time, and when I was talking to Canada Square and looking at sketches, we were not talking cost, we were talking design.

Mr. Deans: No, but you understand that he did already have access to cost.

Mr. Candy: Oh yes.

Mr. Deans: And he knew what you were prepared to pay in 1969 on the basis of that building?

Mr. Candy: Yes.

Mr. Deans: And he knew, as you knew, that costs had risen by a certain percentage ~~over~~ over the course of the two-year period, and therefore, as I say, he wouldn't have to be a genius to come up with a figure in the general area of what Hydro was prepared to pay. Do you think that's fair, you know, without you ever telling him?

Mr. Candy: Except that that building is a more expensive building than that building on a square-foot basis.

~~Mr. Deans~~ Mr. Deans: But that doesn't matter. The fact is that he had to know what you were willing to pay, not what you ...

Mr. Candy: We both knew at that time what OISE cost.

Mr. Deans: All right. But the important thing is that Mr. Moog ...

~~Mr. Deans~~ Mr. Finlayson: Mr. Deans, I am afraid you are making an essential error. As I understand it, the \$29 figure was actual construction ~~at~~ costs.

Mr. Deans: I understand.

Mr. Finlayson: But the \$34 figure of Mr. Moog's is actual construction costs plus interim financing and architects' fees, so there is no necessary relationship between the \$29 and the \$34 by adding 20 per cent.

~~Mr. Deans: No. But what I am saying that Mr. Moog by doing that simple arithmetic know to start out~~

H-2420 follows

H-2420-1

Mr. Deans: No, what I am saying is that Mr. Moog, by doing that simple arithmetic, knew, to start out, the area Hydro was in in terms of what they were likely to want to pay.

Mr. Finlayson: What the customer was interested in.

Mr. Deans: That's right. The customer was interested. If he had been interested in a \$29 building two years ago, and costs had risen, he would still be interested in a building of comparative quality or comparative price, quality notwithstanding. If he was prepared to pay \$29 ~~xxxxx~~ two years ago then he would be prepared to pay \$29 plus whatever the cost of living dictated two years later. So in a factual sense he really did know what Hydro were prepared to pay, although you maybe never told him.

Mr. Finlayson: No. Let me also tell you this.

Mr. Chairman: Gentlemen, I wonder really where we are getting on this. If we ~~are~~ ^{were} going to get Mr. Nastich, I think, to

Mr. Deans: I just ~~what~~ ^{what} to know.

Mr. Chairman: Well, I know, but we went through this with Mr. Candy before, and I don't think any of us are the better off for having the ~~xxxxxxxxxxxx~~ time spent, and I think we are just adding confusion upon confusion today. I am not saying I want to discontinue this line, but I do question that we could spend another hour on this and not be any more informed than we are at the present time.

Mr. Deans: In fact you are saying you want me to discontinue.

Mr. Chairman: Well I'm suggesting.

Mr. Deans: Don't for a moment think you are not.

Mr. Chairman: Well I am suggesting that we are not getting anywhere. But at the same time I am not going to ask you to discontinue if you wish to go on.

Mr. Deans: Well, I hadn't intended going any further anyway because he had already said that that is entirely possible. And I hadn't intended to pursue that particular matter, although I do want to pursue another matter, if that is in order.

Mr. Chairman: All right. Go ahead.

Mr. Candy: I would like to say one thing on that.

H-2420-2

Mr. Deans: Well really, I don't know if you should because ~~it is not important.~~ ~~It is entirely up to you, I mean, I'm not going to stop you, mark you.~~ ~~Mr. Chairman: I didn't say it wasn't important.~~ ~~Mr. Deans:~~

Mr. Candy: I'd like to make this point —

Mr. Chairman: Just trying to get you out of that box,
Mr. Candy:

Mr. Shibley: Which one?

Mr. Candy: I just want to make this one point. When we settle up this building, at the final cost, in order to pay off the architects, it was \$29.72 a square foot. We went back and we dug up ~~any~~ information ~~from~~ from any source we could of the major contracts which had been let in the city in ~~the~~ ^{the} past two or three years for large buildings, and we got a range of tenders. We took of the low tender, and we took off the high tender to see what the spread was. Now you do that because you often get an odd ball that is high and an odd ball that is low, so to make it more even we took it in the middle. And we found that we had a spread of 4½ per cent over those jobs. So we then deducted 2½ per cent from the cost that Hanscomb Roy had in order to get down to a price on which we would pay off the architects, which could be assumed to be a low tender. Now the reason I am bringing this up is that on a building of \$40 million that spread on estimating those jobs is only about \$1 million. So my point is, when somebody says that they are going to build a \$45 million for ~~a~~ \$30 million I just don't believe ~~them~~ ^{it}. It can't be done. There are no give aways in this building business.

Mr. Shibley: Mr. Candy, I think it should be put into evidence - you handed me some documents here, and I notice that the Toronto Real Estate Board, for a prestige building of ten to 20 stories — that would be the category in which this building falls.

Mr. Candy: Yes.

Mr. Shibley: For January, 1972. *I don't know —*

Mr. Candy: #36.

Mr. Shibley: It's \$36 a square foot.

Mr. Candy: Yes.

Mr. Shibley: But isn't the real question here, Mr. Candy, going to turn upon the meaning of the phrase "appraised value"?

H-2420-3


(Mr. Shibley)

Having regard for all of the evidence you have given today, Isn't that what this is going to turn on, as to whether you get value for your money or not, ^{it} is going to turn upon the interpretation of that phrase. Isn't that so?

Mr. Candy: Oh yes, I'll agree with that.

Mr. Shibley: Now what is very disturbing to me is that in Mr. McCallum's file is the phrase ^{and} and it seems to sum up his view when you ran into this impasse with Mr. McCallum, ^{an} agreement should have in it the window-dressing as to ^{the} costs being less than \$34 per square foot, and rent being reduced".

Now if that clause is just window-dressing then you have no assurance that you are going to get the kind of value that you are talking about, have you?



H-2421-1 follows

Sept. 12/73
3:35 - 3:40 pm
C.B.

(Mr. Shibley)

~~that you are going to get the kind of value that you are talking about, give you.~~ It all turns on the good faith of Mr. Moog, because the agreement in terms of the ~~wording~~ wording is incapable of an interpretation that protects you.

Mr. Genest: Mr. Shibley, that is a highly argumentative question. It is not a matter of fact, it is a matter of opinion. Mr. McCallum, when he was in the box, said that his words that you've just read were not accurate, reflected his anger, and that the words "appraised value" ^{has as} it's only disadvantage ~~is~~ that it may allow Mr. Moog to get a builder's profit. I don't know what profit we have in engaging in a debate with Mr. Candy on that subject.

Mr. Shibley: NO, I'm not engaging in a debate because what I'm putting to Mr. Candy is this. That because of what wound up to be the wording of that agreement, which Mr. McCallum, in the spontaneity of his anger, characterized as window-dressing in terms of having any force or effect ^{is} what I take from that wording, ~~that~~ ^{it} Hydro now is exposed really to rely upon the good faith of Mr. Moog in terms of getting value for its money.

Mr. Genest: Well, what good is an answer from Mr. Candy going to do ~~to~~ this committee on that question?

Mr. Shibley: Because he was there when all the debate about this term, this phrase ~~is~~ was being negotiated, and I think the whole thrust of his evidence today has been that he was disappointed, unhappy, upset, the wording is not what they wanted, he says there is confusion as to its interpretation, we have this expression found in Mr. McCallum's material as of the time. The truth of the matter is that the contract does not protect Hydro, Mr. Candy, I put to you. The contract terms in this respect do not protect Hydro in the sense of ensuring that you are going to get value for your money.

Sept. 12/73

3:35-3:40 pm
C.B.

Mr. Genest: Mr. Chairman I object to that question, I'd like a ruling as to whether it should be put.

Mr. Chairman: Well, I think it is similar to the one we talked about this morning and I'm going to rule it out of order. But at the same time what I'm going to suggest to you, Mr. Genest, and we got back into this at your request to try and establish....

Mr. Genest: No, no, not into this one.

Mr. Chairman: Well, maybe not as....

Mr. Genest: ~~NO~~, let me explain my position, ^{The} financial people are going to take the box; the committee is quite free to criticize the basis upon which Mr. Candy arrived at these figures. But I thought what we owed to the committee was as clear an explanation as Mr. Candy could make of the process by which that was arrived at. That was my only purpose.

Mr. Chairman: Well, maybe I'm going to do Mr. Candy an injustice here, but my understanding is no clearer today by reason of his explanation ~~more~~ than it was originally. But what I was going to go on to say to you, Mr. Genest, if you have a clear explanation perhaps you can put it in your summation, and that's probably the best way to handle it.

Mr. Genest: I'll certainly bear that in mind.

Mr. Chairman: All right, because I'm sure I'm not clear from Mr. Candy, I've tried to listen to him both the first time and this time and I'm not sure just how that figure was arrived at.

Mr. Deans: Can I ask him a question?

Mr. Chairman: Yes, Mr. Deans, now here's the order of questioning. Mr. Deans, I realize you were not through. Mr. Glen Hodgson, Mr. W. Newman and Mr. Bullbrook.

Mr. Deans: This may be ^{an} entirely ~~an~~ unfair question. But I'm going to ask it anyway, because it has bothered me all the way through. Given all of the circumstances which I'm not about to enumerate because it would take time, I want to ask You, Mr. Candy, what would it have taken from any of those

Setp. 12/73
3:35 - 3:40 pm
C.B.

(Mr. Deans)

other developers, let's exclude Ellis-Don, recognizing you don't consider them to be developers in the first place; ^b but Horizon or Y and ~~R~~ what would they have to have done to have been on an equal footing with Canada Square at the time they were invited to make proposals?

Mr. Candy: I think the basic thing with Y and R, of course, revolves around the commercial area. They were not willing to take any risk ~~in~~ ⁱⁿ a commercial area and we wanted a commercial area.

Horizon, as they said, they would award a contract ~~to~~ ^{to} V.K. Mason to build the building. Now, I could foresee that under those circumstances we would have to have our mind made up on everything right away and from then on we would probably be paying extras on that job. Which I felt we would get from Canada Square without these problems of extras.

Mr. Deans: So that in fact it had nothing to do with their bid in terms of the value or the cost of the building?

Mr. Candy: Under this proposal system you get to a point somewhere where you've got to make a judgement on this thing.

Mr. Bullbrook: This is the line of questioning that I wanted to undertake, I'd like to if.....

Mr. Deans: Please proceed.

Mr. Bullbrook: You see what causes me concern, and it rightly causes Mr. Deans concern....

Mr. Chairman: We are upsetting the order but you are released from your position.

Mr. Bullbrook: It is just on this very point, frankly, that seems to be a focal point. ~~Ex~~ ^Exhibit 177, Mr. Candy, I don't know whether you want that produced to you, because I'm going to read it to you, which is headed, "Suggested answers to questions that may develop following the distribution of news release on the new head office building." ~~And~~ ^{These} These particular quotations that I'm going to give to you not only exist in that exhibit, but also exist in the responses made and filed in the

Sept. 12/73

3:35 - 3:40 pm

C.B.

(Mr. Bullbrook)

Reading
 Legislature, and I'm ~~reading~~ from page one

Mr. Chairman: What exhibit please?

Mr. Bullbrook: 177.

Mr. Chairman: Thank you.

Mr. Bullbrook: "Q. Why was Canada Square Corporation selected?

(a) In-house capability to handle the complete package."

I put it to you, sir, that Y and R and HORIZON also had in-house capability to handle the complete package. I'm going to continue on and perhaps be *argumentative*.

Mr. Genest: Let him answer please, Mr. Bullbrook. Let's not put a triple-barrelled question to him.

Mr. Bullbrook: I was going to put a quadruple-barrelled, quintuple-barrelled question actually.

Mr. Genest: If you refer to your law school you are told not to do that. When did you stop beating your wife?

Mr. Bullbrook: I didn't think it is exactly the same type of question. Then I'll let you answer. I put it to you that Y and R and HORIZON had in-house capability to handle the complete package.

Mr. Candy: No, especially not HORIZON.

Mr. Bullbrook: All right, you tell us why not.

Mr. Candy: HORIZON are not in the construction business, HORIZON are management people.

Mr. Bullbrook: Well, I put it to you the Y and R *had* then. ~~There was nothing unique about Canada Square's ability to handle this package.~~

~~Mr. Candy: As Y could have~~

H 2421 to follow

September 12, 1973
3:40 - 3:45 p.m.
B.G.

9M (Mr. Bullbrook)

~~Well, I put it to you that Y & R then.~~

Mr. Candy: Y & R

Mr. Bullbrook: There was nothing unique about Canada Square's ability to handle this package?

Mr. Candy: Y & R have construction, ~~and~~ that's all.

Mr. Bullbrook: Why did you deal with Horizon and ~~Y & R~~ Y & R if you knew from the beginning that they didn't have in-house capability to handle the complete package?

Mr. Candy: No, I think that's quite a reasonable thing to do. But just a minute now. I'm saying this -

Mr. Bullbrook: I haven't said anything.

Mr. Candy: I'm saying this on the basis that when you finally get to the end and you come to the point in all these things where you've just got to make a judgment on the type of organization, the people involved, and without getting into personalities -

Mr. Bullbrook: That's fine and I appreciate that. I don't want to cut you off because it's obvious that you made a judgment and the Commission made a judgment. The thing that I'm getting to is this. These are the reasons that you devised, you and Hydro, and I think that it's fair to say that really you are the key person, not perhaps in making the ultimate judgment, but certainly in negotiating the matters. Now, these are the things that you said to the public where your consideration. And the first one was, in-house capability to handle the complete package. Now, are you telling me that to begin with, Y & R and Horizon couldn't meet that very criteria? Why did you deal with them?

Mr. Candy: I think these are things that became ~~and~~ obvious as we went through the process, and we felt were an asset.

Mr. Bullbrook: Well, then this is a post facto judgment, is that it? Are you saying in effect that because Y & R and Horizon didn't meet that criteria, you ~~were~~ weren't going to choose them?

H-2422-2

September 12, 1973

3:40 - 3:45 p.m.

B.G.

Mr. Candy: No, I think I say ^{that they} ~~their~~ best ^{(?) meet} ~~needs~~, don't I?

Mr. Bullbrook: "Why was Canada Square ~~is~~ selected?"

"Candy: Considerations were given to the following points in the selection of Canada Square, in the selection of Canada Square."

Mr. Candy: Considerations.

Mr. Bullbrook: Now, these must be considerations that were objective criteria, I put it to you, before the selection was made.

That's ~~only~~ only fair.

Mr. Candy: Before the selection was made?

Mr. Bullbrook: Well, you say sir, that these were the considerations; - "considerations were given to the ~~selections~~ following points in the selection of Canada Square Corporation". I put it to you those considerations must have been in being before you made the selections if they formed the foundation for your selection.

Mr. Candy: Oh yes, ^{Oh yes,} before we finally made the decision.

Mr. Bullbrook; All right, now are you responding to me then, are you saying that in-house capability to handle the complete package being one of the criteria, that Y & ~~R~~ R and Horizon didn't have that in-house capability? Are you saying that?

Mr. Candy: I am saying that in the case of Horizon absolutely, in the case of Y & ~~R~~ R only ~~partially~~ partially.

All right;

Mr. Bullbrook: ~~So~~ So to begin with, the very ~~same~~ criteria that you started with, Canada Square was ~~the~~ the only one that met that particular criteria. Right?

Mr. Candy: Yes.

(Tape H-2423 follows)

H-2423-1

(Mr. Bullbrook)

~~...the fact that Canada Square was the only one that met that~~
particular criterion. Right?

Mr. Candy: Yes.

Mr. Bullbrook: Did you advise Y and R and Horizon that they didn't meet that particular criterion?

Mr. Candy: No.

Mr. Bullbrook: This is what I am concerned about, sir, ~~and~~ I think, frankly, many members of this committee are concerned with. We are very much concerned about the fact that, ~~and~~ I say this most respectfully, the dealings with Horizon and Y and R were, at best, a rationalization of your position, that is, the position of Hydro. I am going to continue, if I may.

"(b) Previous experience in lease-purchase arrangements and building management." Was Canada Square Corporation unique in that respect?

Mr. Candy: Well, it is the only one that had lease-purchase experience, but not building management.

Mr. Bullbrook: You are saying, then, I guess the answer is that both Y and R and Horizon didn't meet that criterion.

Mr. Candy: Well, they didn't have experience in lease-purchase.

Mr. Bullbrook: All right. The next one is "capability to handle a project of this complexity and scope". Do Y and R and Horizon meet that criterion?

Mr. Candy: Oh, I would say I couldn't deny that they do.

Mr. Bullbrook: "(d) Minimum of other interests and commitments so that full attention could be given to the carrying out of this project as expeditiously and efficiently as possible." Does Canada Square solely meet that criterion? And more importantly, Mr. Candy, did you bring that criterion to the attention of Y and R and Horizon?

Mr. Candy: These are judgements we have to make ourselves.

Mr. Bullbrook: Sir, that's the point. They aren't judgment, sir. The point that I am attempting to make to you is that they

Sept. 8/12/73
3.45-3.50p.m.
B.A.

(Mr. Bullbrook)

are not judgments. They are the foundation upon which you based your judgment.

Mr. Candy: At least, these are certainly considerations that we used in making a judgment.

Mr. Bullbrook: The next one, sir, is "Agreement to ~~xxx~~ retain an outside Consulting Architect at the developer's expense to ensure the most aesthetic and efficient design for this location, keeping in mind the regional planning of the area." Was Canada Square unique with ~~xxxx~~ respect to that criterion?

Mr. Candy: Not necessarily.

Mr. Bullbrook: Mr. Candy, the point I am attempting to make, perhaps poorly, is this. That, in most instances, the very bases for your selection were of such a subjective nature that Canada Square were the only ones that could meet the criteria, and that in others, at least one other, you never even brought to the attention of the other developers that they had to meet that criteria.

Mr. Candy: We didn't bring it to the attention of anybody, that they had to meet the criteria, ~~Even~~ Canada Square.

Mr. Bullbrook: You didn't bring to the attention of Canada Square that you wanted no outside activities other than this particular building? Is that your evidence?

Mr. Candy: No, no.

Mr. Bullbrook: You never did bring that to their attention?

brought
Mr. Candy: They ~~xxxxxx~~ that to my attention.

Mr. Bullbrook: They brought that to your attention.

Mr. Candy: Yes.

Mr. Bullbrook: So that that particular criterion was one ~~wh~~ that was suggested by Canada Square itself.

Mr. Candy: Well, this is something that we found out by talking to these people.

Sept. 12/ 73
3.45-3.50p.m.
B.A.

Mr. Bullbrook: All right. Now that press release from Hydro says that those are the considerations that form the basis for your selection. Okay?

Mr. Candy: Yes.

Mr. Bullbrook: And you didn't bring to the attention of Y and R or Horizon that you didn't want any outside activity.

Mr. Candy: No, I ~~didn't~~ don't think that we were required to under those conditions. These were things that we considered ourselves.

Mr. Bullbrook: Yes. I am not going to carry this line of questioning any further. I want to ^{ask} add one ~~an~~ other line of questioning but I appreciate you letting me in because it was on the point that Mr. Deans made. I have one line of questioning further. Thank you, Mr. Chairman.

Mr. Gaunt: May I just follow up with one point?

Mr. Chairman: Well, I have you on the list at the bottom, but if you want to follow up on that.

Mr. Gaunt: Well, I will raise the question.

Mr. Chairman: ~~No~~, if it is a follow up question, *it is all right*

Mr. Gaunt: ... then ~~go~~ fall in line after that, Mr. Chairman.

Mr. Candy, did I hear you correctly, and I may not have unless my cold is affecting my hearing, and I wasn't sure whether you actually said this or not, but did you say that Y and R in ~~a~~ response to my colleague, was primarily a construction company? Is that what you said?

Mr. Candy: No, no, they are a construction company as well as developers. What I am saying there is that Horizon are not a construction company, they are a management organization. Y and R ~~are~~ ^{are} management organization and have their construction facilities.

Mr. Gaunt: So that, in comparing ^{them} with ~~a~~ Canada Square, as far as the in-house capabilities are concerned, would you consider that Y and R is comparable to Canada Square in that respect?

Sept. 12/73
3.45-3.5-p.m.
E.A.

Mr. Candy: Not entirely, not all their in-house capabilities, their design is not, in Y and R.

Mr. Gaunt: I had understood, in trying to recall Mr. Tathan's evidence, that not only was Y and R strong on the construction end but they were also very strong on the ~~the~~ operations

~~Mr. Tathan's evidence, that not only was Y and R strong on the construction end but they were also very strong on the operations~~

(H-2424 follows)

September 12th, 1973

2424 -1;

3.50 - 3.55 pm
AA

(Mr. Gaunt)

~~construction and, but they were also very busy on the~~
operations and maintenance, having under their control,
I believe, some two million square feet in the City of
Toronto.

Mr. Candy: No, I am not arguing.

Mr. Gaunt: with some 10 buildings.

Mr. Candy: I am not arguing the proportion of
management and maintenance. I am sure they were strong
in that.

Mr. Gaunt: So that really, on the first point raised
by Mr. Bullbrook, with regard to in-house capabilities,
Y ^{and} R rates just as highly there as Canada Square, in your
view, or am I wrong?

Mr. Candy: Well, I think the thing ^{that} is different there
is in the design area. Y ^{and} R have have their in-house
architects - I am sorry, ⁱⁿ the other way around.
Canada Square has their in-house
architects, Y ^{and} R use outside architects. Now, there is
nothing particularly wrong with that except that when you are
working with an organization, it's all controlled by one
person.

Mr. Gaunt: OK, Mr. Chairman.

Mr. Chairman: Mr. Glen Hodgson.

Mr. R. G. Hodgson: Mr. Candy, there have been several
things mentioned as the probable reason for Hydro making
the selection of the developer they did, and one of the
memos ^{which}, I believe, is exhibit number 17 which is
made to Mr. Smith ^{mentions} at the bottom of page 2, the
indication to me that the writer's impression was that
Mr. Moog was going to - would be quite willing to open his
books at any time, if required to do so, to Hydro. Was that
your impression?

Mr. Candy: What memo is that?

Mr. R. G. Hodgson: Number 17, at the bottom of page 2.

September 12th, 1973

3.50 - 3.55 pm

2424 - 2

AA

(Mr. R. G. Hodgson)

Was that your impression, Mr. Candy?

Mr. Genest: I don't think we are with you, Mr. Hodgson.

Did Mr. Moog - is there an exhibit where Mr. Moog says he is going to open his books to us?

Mr. R. G. Hodgson: It said - I'll read it - "with regard to the OISE building"

Mr. Finlayson: No, Gerry Moog ^{this is} indicated ^{to} that Barry ^{had} Brooks ^{it} do something about, ^{to} not G. Hodgson or Bill ~~Winnipeg~~.

Mr. R. G. Hodgson: I asked Mr. Moog this same ~~the~~ question, Mr. Genest, and he denied it.

Mr. Genest: Oh, I see.

Mr. R. G. Hodgson: But I am asking Mr. Candy, was it his impression

Mr. Genest: Perhaps if ^{he} ~~you~~ could ^{be} shown ~~the~~ the memo. I think he may be having the same trouble I was.

Mr. Shibley: Which exhibit is that?

Mr. R. G. Hodgson: It's number 17.

Mr. Genest: Number 17.

Mr. R. G. Hodgson: The bottom of page 2.

Mr. Candy: I can't really answer that. That's not my memo and I haven't seen that memo. *I was not involved*

Mr. R. G. Hodgson: I am not really concerned about the memo so much as the ~~the~~ what was your impression of Mr. Moog? Did you have the belief that at any time in the whole range of ~~the~~ that he was quite prepared to open the books to Hydro if it was required?

Mr. Candy: You are talking now in the early stages ~~of~~ like July

Mr. R. G. Hodgson: The early stages or later stages. What was your belief or knowledge

September 12th, 1973

3.50 - 3.55 pm

2424 - 3

AA

(Mr. Candy)

Mr. Candy: When we are talking about costs that is the only way you can get the costs

Mr. R. G. Hodgson: Was it your personal belief that, if it was required, that Canada Square would open the books to Hydro ^{to} ~~for the~~ establishment cost?

Mr. Candy: I ~~would~~ say yes, I think.

Mr. Genest: ~~What~~ What was the answer? I am sorry, I didn't hear it.

Mr. Candy: I ~~would~~ say yes, I think. At that particular time, when we talked about costs, he was looking for a bit of elbow room to move, but I never ~~thought~~ thought at that time that there would be any problem with getting that kind of information.

~~Mr.~~ Mr. R. G. Hodgson: But if there was a problem, you had a feeling that there was no problem with Mr. Moog opening the books, if it was required.

Mr. Candy: Yes. That's right.

Mr. R. G. Hodgson: When did you lose that belief? Was it after the contract?

Mr. Candy: You mean after . . .

Mr. R. G. Hodgson: When you were negotiating as to . . .

Mr. Candy: Yes, through the negotiating period when this became a real subject of discussion.

Mr. R. G. Hodgson: But all the way through the piece up to the selection of a developer and so on, you had the belief that, if it was ~~negotiated~~ necessary . . .

Mr. Candy: I don't think I ever talked to him about it during that period.

Mr. R. G. Hodgson: Had you at any time?

Mr. Candy: Because it was only at that time that I went back to get this

2425 - 1 follows

Sep 12/73
3.55-4.00 pm
V.H.

~~Mr. R.G. Hodgson: Had you at any time?~~

MR. Candy: ~~Because~~ Because it was only at that time that I went back to get this upset price which is what brought the subject up.

Mr. R.G. Hodgson: Did you ^{ever} at any time talk to him ^{about} about ~~it~~ it was necessary ⁱⁿ opening the books ⁱⁿ the preliminary stages, or ^{the} early days?

Mr. Candy: No. No.

Mr. R.G. Hdgson: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Newman.

Mr. W. Newman: Yes, Mr. Candy, my question just requires a very simple answer and won't take long. I would like to know, keeping in mind your evidence this morning, you were talking about the costs being in the agreement, I am talking about the final agreement; Are you satisfied in your own mind that the final clout you have in the lease that you are talking about, ^{with the} and the help of Hanscomb Roy, are you satisfied in your own mind that Hydro is well protected in that lease or in the agreement?

Mr. Candy: Well, under the present conditions now, and under the building escalation ~~and~~ situation, I must say I am not particularly worried about it.

Mr. Bullbrook: Mr. Chairman, I think it is my turn again and frankly, it is strange, ~~because~~ ^{but that was} the very subject that I wanted to just question you further on. You used the word "club" before in response to Mr. Renwick; you felt this was the club. I don't want to split legal hairs with you but, sir, you have got an agreement. You say, "Our club is to withhold ~~signing~~ signing the lease and they can't get their mortgage money." Really, ~~you~~ you have an agreement.

Mr. Candy: Yes, we have an agreement but the subject has some up, of course, you know, how can we enforce that? Now, I'll see if there is any other way I can explain that. I don't know any other way.

Mr. Bullbrook: Mr. Candy, it is not my ~~purpose~~ purpose to get you in an awkward position on this. I just wanted to

Sep 12/73
3.55-4.00 pm
V.H.

(Mr. Bullbrook)

really clarify, though, in my own mind, that I regard Hydro ~~has~~^{is} having a legal obligation to Canada Square to sign the lease, if Canada Square meets the criteria established by Hydro in the agreements, and to take the position that you have a club fiction. in not signing the lease is pure ~~fact~~^{fiction}.

Mr. Candy: Oh, well, in any kind of an agreement, I mean, ~~the~~ⁱⁿ buildings ~~they~~^{we} are building now, if we are not satisfied when we get a building finished, ~~then~~^{if} there are a lot of things ~~we have~~^{if} to do or there are ~~some~~^{that we think} things, ~~we~~^{shall} be torn out and done over again, there is only one way you can do ~~it~~^{it} and that is with money. If you have paid all your money, forget it.

Mr. Bullbrook: That's fine. If that is what you are talking about, sir, and ~~you~~^{it} are talking about things that have not met your ~~own~~ specifications, I thought when you were talking to Mr. Renwick you were talking about the question of costs.

Mr. Genest: Mr. Bullbrook, I think the only thing you can read into that, ~~to~~^{is} be fair, that if there is a dispute about the meaning of a clause, look at the parties' bargaining position as to a settlement of that dispute. That's all I think Mr. Candy is saying. It's all I said. I agree it is a legal agreement, and if people feel strongly about, it will be determined by a ~~new~~ court. But the likelihood of that ~~is~~^{has got to be rego}.

Mr. Bullbrook: That's the impression I have.

Mr. Genest: as the bargaining strength of the parties at the time the dispute comes up. I think the only point we are making ~~is~~^{is} we have got a ~~new~~ pretty strong bargaining position, to settle any ~~dis~~ disagreement.

Mr. Bullbrook: Well, it was just the use of the word, "club" that Hydro had and I don't want to get into semantics but really I don't regard Hydro being in any better position than Canada Square, you have got a contract. That's fine, sir.

Sep 12/73
3.55-4.00 pm
V.H.

Mr. Chairman: Mr. Gaunt.

Mr. Gaunt: Mr. Chairman ...

Mr. Genest: Did you ever try suing a bank?

Mr. Gaunt: ... I just wanted to have ...

Mr. Bullbrook: May I interject? You know, I want to tell you, Mr. Genest, one thing I find more than passing strange, the very kernel of this agreement is a phrase that nobody seems to know what it means. Its almost sitting down² and negotiating a contract that invites litigation. Go ahead, I am sorry.

Mr. Chairman: Mr. Gaunt.

~~REDACTED~~

Mr. Renwick: Than God you and and I have never drafted such an agreement.

Mr. W. Hodgson: *Then they* Wouldn't need any more lawyers.

Mr. Shibley: That's what keeps us busy?

Mr. Renwick: Every agreement I have ever drawn, invited litigation.

Mr. Gaunt: Mr. Chairman.

Mr. Chairman: Mr. Gaunt, I am trying to give you the floor?

Mr. Gaunt: I realize that, Mr. Chairman. I want your help, Mr. Candy, to clarify in my own mind what Hydro's posture was in the period July 19, 1972, being the date on which the Commission agreed to negotiate with Canada Square, and the end of October

H-2426 follows

II-2426-1

(Mr. Gaunt)

~~The committee agreed to negotiate with Canada Square, and at the~~
of October, 1972, November 1 being the date on which the agreement was signed. I gather, and correct me if these statements are not correct that as far as Hydro was concerned, Hydro did not want to take a hard line in negotiation because ~~here~~ the fact that you were dealing with Canada Square was already made public and Hydro was of the position that it was now their duty to go forward with Canada Square and get the best possible deal under the circumstances. So you didn't want anything to sabotage the deal with Canada Square, if I may put it that way. Is that a correct assessment?

Mr. Candy: No. If the negotiations with Canada Square had broken down and we were not satisfied that we could get a deal, we would have no hesitation at all in cancelling that and negotiating with somebody else. The fact that it had been published ~~we are~~ we are building a building for 60 years and we are not going to get into that for the sake of a little bit of publicity over that at that point.

Mr. Gaunt: Did you consider that Mr. Moog's withdrawal from the formula for costing the building was really fundamental to the whole agreement, or did you consider it an important matter, but not so important that it should jeopardize the deal?

Mr. Candy: Well, it was important. I think the word ~~if~~ "fundamental" is probably a little bit strong. I think that we made a lot, we achieved a lot of concessions through those negotiations, and as I say, you can't win them all. We felt, Mr. McCallum and I, at that time felt that, as I said before, the sort of comfort we had was the fact that escalation was on the way and we felt that the problem under those conditions would probably diminish, and the fact that we were out to get a \$34 building. And if we are going to force Canada Square to spend up to or more than \$34, they are certainly going to have to prove to us that we have in order to pull it back.

Mr. Gaunt: So that insofar your negotiating posture was concerned, during this period, the fact that Mr. Moog had withdrawn from his position he had taken with you, did that put you in a position of saying "Look, we have got to talk tough on this deal", or did

H-2426-2

(Mr. Gaunt)

you go in with a pitter-patter approach, if I may put it that way?

Mr. Candy: Oh no, ~~Mr.~~ we talked tough on a lot of things. As a matter of fact, in some instances, ⁱⁿ some of the discussions ~~1~~ we had, I was almost embarrassed with the way McCallum was going after Moog. I mean I am not kidding. We have had discussions with Moog where we have really ~~brought~~ ^{laid} down the law. This was not a simple negotiation.

Mr. Gaunt: Would you describe Hydro's bargaining position during that period as a bargaining position from strength rather than weakness? Let me get your answer and then I'll ~~ask~~.

Mr. Allan: Like playing bridge.

Mr. W. Hodgson: You haven't got ~~an~~ ^{the} answer you wanted, then?

Mr. Gaunt: No, no, I'm progressing here, I think. What I really wonder about, Mr. Candy, I am wondering if Mr. Moog had the feeling that Hydro was now locked in and that he was going to strike for the very best possible deal he could make, and Hydro was also, of course, trying to bargain for the best deal they could make, ^{But} at the same time, with the limitation of the fact that they were prepared to go all the way with Canada Square, that is really what I am driving at.

Mr. Candy: Well let's look at it this way. There is only ~~one Hydro that wants to build a building so Canada Square only have one customer. But Hydro have got all kinds of people...~~

H-2427-1 follows

Sept. 12/73
4.05 to 4.10 pm
DT

~~(Mr. Gaunt)~~

~~the fact that they were prepared to go all the way with Canada Square.~~
~~That's really what I am driving at.~~

~~Mr. Candy: Well let's look at it this way. There~~
is only one Hydro that wants to build a building # so Canada Square only have one customer but Hydro have got all kinds of people that will build that building for them.

Mr. Bullbrook: That's subject to some conjecture, may I say, when you look at your criteria there.

Mr. Gaunt: I don't think I'll ~~more~~ pursue it any further.

Mr. Chairman: Mr. Allan.

Mr. Gaunt: Mr. Chairman, but there's one other matter that I just raise and I am not sure how important it is. It went back to Mr. Shibley's attempt to ask Mr. Candy about his presentation before cabinet. I question whether in fact that would be privileged, sir. All kinds of organizations and people make presentations before cabinet. I realize that the deliberations of cabinet itself are privileged and confidential.

Mr. Chairman: Mr. William Hodgson came in with the answer and I was looking really to Mr. Allan for the answer and Mr. William Hodgson said -

Mr. R. G. Hodgson: We have other sages.

Mr. Chairman: Well, on cabinet experience, there are not too many of us here that have had that.

Mr. Gaunt: Well, I'm thinking, Mr. Chairman, in terms of organizations which make presentations to cabinet. Certainly the Federation of Agriculture, the Gasoline Dealers --

Mr. R. G. Hodgson: They are all public.

Mr. Gaunt: They are all public. They make a presentation to cabinet --

Mr. R. G. Hodgson:was in cabinet.

Mr. Chairman: I don't know whether it was made public or not.

Mr. ~~W~~ Hodgson: Two government bodies dealing within cabinet, I would say is confidential.

Mr. Chairman: Any comment on it, Mr. ~~Gaunt~~ Allan?

Sept. 12/73
4.05 to 4.10 pm
DTMr. W. Hodgson~~A Member~~: I don't suppose it is.

Mr. Gaunt: Well, maybe it is not.

Mr. W. Hodgson~~As I understand~~: Water under the bridge now. If Mr. Candy wants to tell us while he is here, I have no objection.

Mr. Allan: I would think, Mr. Chairman, I would think any discussions that took place if ~~any~~ a presentation was made to Cabinet would be considered confidential. The fact that someone appeared before Cabinet would not be considered confidential in my opinion.

Mr. Chairman: Well I ~~suppose~~ suppose if it was a brief that somebody presented and the people wanted to make that brief public they are free to do so.

Mr. Allan: Oh yes.

Mr. Chairman: But if it --

Mr. Allan: The brief isn't discussed while those who make the presentation are in Cabinet, as a rule. Well, Mr. Chairman, I didn't want ~~Mr.~~ Mr. Candy to feel that I didn't have any regard for his opinions so I just going to ask him one question because I think that someone said that Mr. Nastich doesn't want anyone getting into this ~~pro-~~ ^{rating} ~~and~~ affair until he's ~~on~~ on the ~~stand~~ stand, that he wants to explain that.

Mr. ~~Genest~~ Genest: Nastich said that?

Mr. Chairman: I hadn't heard that but I was just hoping that we might get one version and one version only and that's from an accountant.

Mr. Allan: I was just going to ask Mr. Candy when you prepared the specification, and you wanted a \$40 per square foot building, didn't you take it --

Interjection by member.

Mr. Allan: Oh, don't stop me now. I have just got started. Didn't you give consideration to the fact that the specifications that you were submitting to these firms who were going to make proposals would provide the type of building you wanted which you felt was a \$40 per square foot building?

Mr. Candy: I don't want the ~~press~~ press to get this \$40 now.

Sept. 12/73
4.05 to 4.10 pm
DT

Mr. Allan: No, [#]34.

Mr. Candy: No.

Mr. Allan: Well, if you didn't -- ~~just a minute~~

Mr. Candy: Just a minute, you can house the --

Mr. Allan: No, but you were asking - you presented specifications for the type of building that you wanted, wouldn't you.

Mr. Candy: No, for the facilities that we want in that building.

Mr. Allan: Well then you really didn't want a \$34 per square foot building necessarily.

Mr. Candy: Oh, sure we do.

Mr. Shibley: That's --

Mr. Allan: Well then, wouldn't you have ^{re}prepared specifications that would have brought you a \$34 per square foot building

Mr. Candy: Well, if you are going to do that, then you have to go the other method and you have got to write a complete specification.

Mr. Allan: No, no --

Mr. Candy: As I say, you know you could house this thing in plywood if you wanted to or you can house it in stainless steel.

Mr. Allan: You see it seems to me, in fairness to those who were presenting proposals, that they should have known the type of building that you were wanting. *And that --*

Mr. Candy: Well, they all saw ~~---~~

Mr. Allan: Your specifications should have provided that information.

Mr. Candy: They all saw this building, ^{and} the drawings of that building which gave them an idea of the character of the building we were looking for --

Mr. Allan: This is like comparing apples and oranges. You didn't want a building like that. You just decided that you didn't want a building like that.

Mr. Candy: You are now talking design rather than quality, I take it.

~~Mr. Allan: No, I am talking quality.~~

(28 follows)

H-2428-1

September 12, 1973
4:10 - 4:15 p.m.
B.G.

~~(Mr. Candy)~~

~~...well, source of building design rather than quality. I don't~~

Mr. Allan: No, I'm talking quality.

Mr. Candy: Yes; I mean design is really the difference in these two buildings.

Mr. Allan: I'm not going to get into that. That was all I was going to ask, but it seems very strange to me that if you were determined to have a building of the quality of a \$34. per sq. ft. building, that the specifications wouldn't have indicated that.

Mr. Shibley: That's very ⁽²⁾ ←

Mr. Candy: I don't see how you could indicate a \$34. building in a specification without having drawings of a building.

⁽²⁾
Mr. Deans: Why not?

Mr. Candy: You see what we asked for in that thing - we outlined the responsibilities of the various parties, we outlined the fact that we wanted sixteen high-speed elevators, that we wanted loading ~~ee~~ docks, that we wanted a vault, that we wanted the various typical things, because other than that, an office building, well, for instance, the building we are in at 77 Bloor, is ~~strictly~~ strictly a big warehouse; it's just big, open floors. Now, that ~~deans~~ doesn't suit our purpose for a ~~big~~ head office building. We want other specific things in it.

Mr. Allan: Sure.

Mr. Candy: So we are ~~try~~ trying to list the things which are not normal to an average office building. I don't know whether I'm getting my message across properly but there are certain things which are peculiar to various organizations. This is a custom building designed ~~for~~ for Hydro requirements.

Mr. Allan: And you wanted a quality building.

Mr. Candy: Yes, we want a quality building.

But

Mr. Allan: ~~Did~~ you not indicate that in your specifications?

Mr. Candy: ~~No~~, but I asked them in the specification what the quality of the building would be.

September 12, 1973

4:10 - 4:15 p.m.

B.G.

H-2428-2

Mr. Allan: Well, wouldn't it have been helpful to those who were submitting proposals if they had an idea of the quality building you wanted?

Mr. Candy: Well, this gets back to the other thing, that I don't see how you can design a building, or how you can state the cost of a building ~~if~~ before you design it.

Mr. Allan: No, but you could state the quality of the building you wanted. However, we are not going to agree, so that's that.

Mr. Chairman: Well, Mr. Candy, Mr. Allan has put me in an embarrassing position that I ~~must~~ ask you a ~~quads~~ question. I have a high regard for ~~you~~ ^{him}. You ^{have} used the word concessions, or concession, twice to-day; at least once in answering a question from Mr. Gaunt and earlier when you spoke about going to Mr. Moog for concessions. Now, is that the word you want to use. Is that the right word, that is what I am asking?

Mr. Candy: No, I imagine now that you bring it up, there must be a better word.

Mr. Renwick: Changes.

Mr. Deans: ~~an~~ ^{an} Alteration Alterations.

Mr. Chairman: Because it seems to me ~~that~~ ^{with} this contract that you have you shouldn't have to go to the other side for concessions. You might go for changes or additions or ~~something~~, something, but it ~~a~~ bothers me when you use the word concessions.

Mr. Candy: Well, say improvements then, might be the word.

Mr. Chairman: And I am afraid that's the position the Commission has left you in. You may have one hand tied behind your back and ~~you~~ there may be concessions that you have to ^{peek out} ~~however~~, however, any other questions?

Mr. Shibley: That's fantastic.

Mr. Renwick: Mr. Chairman.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Before Mr. Candy goes, I don't think it would be exceptional to say that I am, and the other members of the committee are, fully ^r aware that sort of the byunt, in ^a the personal sense, of this investigation from Hydro's point of view, has

September 12, 1973
4:10 - 4:15 p.m.
B.G.

(Mr. Renwick)

fallen on Mr. Candy, and he has been in attendance throughout, and I know it's been a difficult time. I am prefacing all my remarks in the future, not wanting anyone to draw any conclusions from what I say; but I would like to express to Mr. Candy on behalf of all ~~us~~ of us the courteous way in which he has given his evidence to the committee and the co-operation which he has shown throughout a very difficult time ~~for~~ for him.

Mr. Bullbrook: Could you just add ~~to~~

Mr. Chairman: Thank you Mr. Renwick, and that is echoed

I am sure by all of us. ~~Mr. Candy said:~~

Mr. Candy: Thank you, Mr. Renwick.

Mr. Bullbrook: It's obvious that his ~~&~~ dedication has been to Hydro throughout, really.

Mr. Candy: Well, thank you very much, Mr. ~~Renwick~~.

Mr. Chairman: Just a minute, before you express your thanks. Mr. Hodgson has indicated that I ^{had} overlooked him and I am sorry, I didn't realize I had.

Mr. Renwick: Oops, here we go again.

Mr. G. Hodgson: Now, Mr. Candy, last night we ~~listened~~ listened to Mr. T~~am~~blin and he talked about air-conditioning system and so on, ~~and one~~ ^{ask} thing I wanted to ~~ask~~ you about, one of the things earlier I think, came out from Mr. Moog's evidence, ~~we~~ was with regard to the water-tanks in the bottom of the new building, and that ~~was rather a unique system.~~

(Tape H-2429 follows)

Sep 12/73
4.15-4.20 pm
V.H.

(Mr. R. G. Hodgson)

~~the water tanks in the bottom of the new building and that~~
was a rather unique system. Where did that energy-saving idea come from? From Mr. Moog's firm? ^{understand that} Because I didn't/

Mr. Candy: ~~Probably~~ Partly, and I think from Tambllyn's.

Mr. Tambllyn and I went down to Montreal to see the one in the building in CBC/Montreal, which is half ^a million gallons, but I think something that prompted it initially was the fact that when we had 150 foot-candle specified ^{and} then we reduced this to 100, we ourselves were quite concerned with the conservation of energy, not trying to burn as much a power as we could, but to try to conserve power, and we felt that in doing this we might help to lead other organizations to doing it as well. On top of that, in the contract, the fuel to heat the building is provided by Canada Square, but it is quite recognized that the ~~lights to the building~~ power for the lights ~~are~~ paid for by Hydro, and if it is necessary to burn the lights all night to heat the building, then Hydro would be paying that cost, ~~and~~ ^{1.25 million} by putting this ~~million and a half~~ gallon storage tank in the basement, the waste heat during the day, instead of going out through the cooling towers, would be recycled through the tank, and the water in the tank ~~and~~ would be heated, which would carry the building all night. I understand this tank will carry that building for two or three days in the event of ^a power failure. So that it is a combination of ideas and it is something which we hope will be quite a PR point for Hydro in helping other people to do the same thing to conserve energy.

Mr. R.G. Hodgson: But it is not a new process in the sense that it is not anywhere else. It is in existence.

Mr. Candy: Well, it has been done, I understand, in Japan quite successfully. There is one in France and the only one in Canada I know is ⁱⁿ Montreal. I think there is a small one in the Telegram building which I think is taken from their equipment. The one I saw in the CBC building was providing

Sep 12/73
4.15-4.20 pm
V.H.

(Mr. Candy)

heat but not cooling. ~~It was~~ I don't know whether it was ^{it} operated properly or not, but it hadn't operated too successfully. But it was half a million gallons. This one we are putting in is 1.5 million gallons and this is something which will be entirely below the lower basement floor. It can't be excavated until we get about seven floors built so that we can raise the crane, because the centre crane is sitting right over it now and we have to get enough structure to support the crane. So we have to go in afterwards and take this out and put this tank in. It's a ^{fairly} ~~very~~ expensive operation and it is something which is not costing Hydro anything more.

Mr. R. G. Hodgson: Thank you.

Mr. Chairman: Well, Mr. Candy, I am not going to take away from the sincerity ⁱ of Mr. Renwick's remarks by adding to them, but thank you very much.

Mr. Candy: Well, I would just like to ^{say} ~~say~~ before I leave that I appreciate very much the consideration that this committee has given me. I think I was under quite a strain to begin with, as you know, because I ^{felt} ~~thought~~ I was very heavily involved in this. I was quite concerned when this thing came up, I think to quite an extent because of the fact that I had been very instrumental in this. I had pushed this job and I was concerned for the embarrassment it would cause other people in going through this inquiry. I think that the job you have done has been a very thorough job and nobody can accuse this committee of doing a 'white-wash on this situation by any stretch of the imagination, and I think I would like to thank you, Mr. MacBeth, and Mr. Shibly ^{and} and all the members of this committee for the consideration they have shown me, which has made my life a lot easier than I thought it would be ~~be~~ when I started. Thanks very much.

~~Mr. Chairman:~~ Thank you Mr. Candy.

H-2430 follows

Sept. 12/73
4.20-4.25 p.m.
B.A.

H-2430-1

~~consideration they have shown me which has made my life a lot easier than I thought it would be when I started. Thank you~~

Mr. Chairman: Thank you, Mr. Candy. Do you wish a break now, Mr. Shibley?

Mr. Shibley: Yes.

Mr. Chairman: We will take a ten-minute break.

The committee recessed briefly at 4.21 o'clock p.m.

(Tape H-2431 follows)

Sept. 12/73

4:33 - 4:35 pm


C..B.

The committee resumed at 4:33 o'clock, p.m.

Mr. Chairman: Ladies and ~~gentlemen~~, I call the meeting

back to order. Mr. Genest was somewhat concerned about parts of Mr. Dillon's evidence yesterday and has requested that Mr. Dillon be recalled. Do you wish to make any further comment, Mr. Genest?

Mr. Genest: Well, I understand the purpose of ~~my~~ purpose in requesting that Mr. Dillon be recalled is to hear him in connection with his statements yesterday that he had spoken to Mr. Gathercole in September. ^{that} Mr. Gathercole had mentioned Mr. Smith's complaints in September. I want to make it clear to this committee that I was disturbed about that evidence and I asked Mr. McCallum to speak to Mr. Dillon after he had given his testimony ~~and I~~



H 2432 to follow

H-2432-1

(Mr. Genest)

~~Mr. McCallum to speak to Mr. Dillon after he had given his testimony~~

and I understand that Mr. Dillon has now rethought the matter and has some correcting evidence to give. I want to make it very clear, ~~that~~ I don't want it to be underhanded, that this is as a result of speaking to Mr. McCallum, speaking to Mr. Gathercole, and checking some records. I want it out on the table so that there will be no accusations that we have procured this in some underhand way. But I felt that in fairness to Mr. Gathercole that if Mr. Dillon has second thoughts about the matter the committee should hear about them.

Mr. Chairman: Mr. Dillon.

Mr. Deans: What about all the other witnesses, if they have second thoughts?

Mr. Genest: Yes.

Mr. Chairman: Mr. Dillon, we obtained your evidence yesterday under oath and that oath is still applicable. Mr. Shibley.

Mr. Shibley: Thank you. Mr. Dillon, you communicated with me by letter of today indicating that yesterday you gave evidence of a conversation you had with George Gathercole in which he indicated that "my friend Smith was causing all kinds of trouble", and you go on to say, "Although I had no firm recollection of when the conversation took place I did not preclude that it might have taken place during September, 1972". And secondly, "probably took place before I started attending commission meetings in my capacity as adviser on implementation to the commission". After testifying I learned from Mr. James McCallum that the above statements conflicted with Mr. Gathercole's evidence to the effect that he, Mr. Gathercole, was not aware of Smith's involvement in the case until sometime in May 1973 when he learned of the existence of Mr. Smith's letter to Mr. Seguin. Subsequently I took the following action; requested Mr. Raney, Hydro counsel, to ascertain exactly when I started attending commission meetings as Task Force Hydro adviser to the commission; second, indicated my concern to Mr. Bell - that is my associate - this was about 9:30 p.m., "talked to Mr. Gathercole

H-2432-2


(Mr. Shibley)

discussing our conversation in an effort to pinpoint the time. Mr. Gathercole was positive that our conversation could not have taken place until after he had learned of Smith's letter to Mr. Seguin. Mr. Raney informed me this morning that I began to attend commission meetings on January 17, 1973. After careful reflection I now feel that my talk with Mr. Gathercole did not in fact take place before the middle or latter part of May, 1973. I have searched my diary and meeting book and can find no notation which would definitely set the date".

Now is that the ~~purpose~~ ^{purpose} of your reattendance to give evidence, and does that accord with what you want a matter of record at this time?

Mr. Dillon: That is correct.

Mr. Shibley: Now, Mr. Dillon, the memorandum - I'm sorry, the letter from Mr. Smith to Mr. Seguin was dated August 22, 1972. The evidence is that the commissioners met and discussed the subject of the letter without disclosure as to the author of it on September 1, 1972. And I took your ~~in~~ earlier testimony to be, and I am going to read portions of it to you, that it was a matter of a short time after the commissioners had discussed the matter that Mr. Gathercole spoke to you and, using a term that ~~was~~ you used with me when ~~I first interviewed~~.



H-2433=1 follows

(Mr. Shibley)

~~spoke to you and using a term that you used with me when~~
I first interviewed you, was nettled and said to you,
"Your friend Smith was causing all kinds of trouble."

And I am going to go back on the evidence but I think you made it clear in your evidence initially that it was not possible that that conversation had taken place a materially long period of time before the occasion of the commissioners having met - I am sorry, a long time after the commissioners had met to discuss it.

Now, to be fair to you and so that the committee members will know your evidence in this respect, I reference Hansard 2332 - 2.. There is not that much evidence and I am going to be complete. Mr. Dillon was asked, "Right, well then, did you subsequently ask Seguin if he had heard from Smith?"

"Mr. Dillon: Yes, on the basis again of our review of the facts, I recall that at a meeting which Task Force Hydro had set up with members of the Commission to discuss Task Force Hydro work, at the luncheon break I said, 'By the way', or words to the effect, 'By the way, did you hear from Don Smith?' The answer was 'yes', and that was the size of it.

"Mr. Shibley: YES. Now then, what was the next occasion on which you had any communication from anyone ~~that~~ preferable to what we might call the Ellis-Don complaints?"

"Mr. Dillon: You mean a written ~~communication~~ communication?"

"Mr. Shibley: No, any kind of a communication. When did somebody next speak to you about the fact that Ellis-Don had been complaining? I will help you, Mr. Dillon. I am thinking now of the fact that on September 1, there was a meeting of the Commission and before that meeting there was a sort of pre-meeting meeting of the Commissioners respecting this letter that is before you to Mr. Seguin. The letter had been received

September 12th, 1973

4.40 - 4.45 pm

2433 - 2

AA

(Mr. Shibley)

by Seguin and as a topic he had taken it up with the Commission. Did you hear about the fact that the Commission had considered this letter ~~from~~ Smith to Seguin?

"Mr. Dillon: Well, I am not sure that I HEARD IN those specific terms, but I was told during a conversation that -I had with Mr. Gathercole that words to this effect, that 'your friend Don Smith has' - I have forgotten what it was 'he is causing a lot of trouble' or something like that, I have forgotten; and from this I inferred, at least, that the letter had been discussed.

"Mr. Shibley: Yes, and in terms of ~~that~~ time, when was communication made to you by Mr. Gathercole?

"Mr. Dillon: I can't be specific about that" -(and I ask you to note this Mr. Dillon)- "It was certainly before I BEGAN TO ATTEND Commission meetings regularly.

"Mr. Shibley: Yes.

"Mr. Dillon: And I think that was in December.

"Mr. Shibley: Was it before the matter became an issue in the press?

"Mr. Dillon: I would presume not. I would presume, as I remember, the context, I think it was by that time a matter of public concern.

"Mr. Shibley: I see. You had indicated to me earlier that you thought it was in September that he made that communication to you. - Is your recollection now different to that?

"Mr. Dillon: No. No.

"Mr. Shibley: You think it was September 1972?

(Mr. Shibley)

"Mr. Dillon: Well, that could well be, but under this it just . . .

"Mr. Shibley: Well, let me put it this way. In relation to the time -- did Mr. Gathercole indicate to you that it had been raised with the Commissioners?"

Mr. Chairman: Do you have the place there Mr. Dillon?

Mr. Shibley: I am sorry. 2333 - 1. I am about a third of the way down.

Mr. Chairman: 2333 - 1.

Mr. Shibley: Still with me.

Mr. Dillon: I have got it now.

Mr. Shibley: "Mr. Shibley: Well, let me put it this way. In relation to the time -- did Mr. Gathercole ^(indicate) ~~indicate~~ to you -- that it had been raised with the Commissioners?"

"Mr. Dillon: It was a conversation at which I - it just added up that Roger Seguin had mentioned this letter and my name was involved and so on. I then remember the letter and ~~that~~ that was kind of the first time this whole thing came back to me.

"Mr. Shibley: And was Mr. Gathercole nettled at you because you had put Smith on to Seguin?"

"Mr. Dillon: I wouldn't say he was nettled at me. I think he was concerned about the general situation and he . . .

Mr. Shibley: When he said to you, 'your ~~friend~~ friend Smith' did he indicate to you that not only he but the other Commissioners were somewhat ~~disturbed~~ disturbed that you had had Smith write to Seguin?

"Mr. Dillon: No. No. It was not -- the discussion was not in that detail.

"Mr. Shibley: ~~Now~~ Now in terms of relating it to the discussions within the commission about the letter to Seguin,

September 12th, 1973

4.40 - 4.45 pm

2433 - 4

AA

(Mr. Shibley)

was it shortly after Seguin had raised it with the Commissioners
that Gathercole spoke to you?

"Mr. Dillon: Well, it would be afterwards. How
shortly, I just don't know.

~~"Mr. Shibley: Has there any indication from the
commissioners to how soon after the commissioners
discussed the discussion?"~~

2434 - 1 follows

✓ (Mr. Shibley)

"Mr. Shibley: Was there any indication from the content of the discussion as to how soon after the Commissioners had discussed this, Gathercole was saying to you, 'Your friend Smith'?"

"Mr. Dillon: No, I don't think so. I would have thought that it was rather a current event, to put it that way.

"Mr. Shibley: And 'current' in your mind, would that be within a month?

"Mr. Dillon: Well, certainly I would think it would be a shorter period than that. I am just assuming. It was the fact I think that this thing was now out and a matter of public concern ..."

Mr. Genest: Now "out".

Mr. Shibley: Yes. "... and it was all part of the same picture.

"Mr. Shibley: Well, when you say 'public', it was a matter of concern to the Commissioners?

"Mr. Dillon: Yes.

"Mr. Shibley: It had just been discussed by the Commissioners?

"Mr. Dillon: Well, as I say, the detail of this exchange was not such that I could get anything more out of it than the fact that—

"Mr. Shibley: I see. Now then, in the period of November, 1972, did you have any communication with anyone referable to the Hydro head office building?

"Mr. Dillon: Not that I recall."

I then asked you later about Mr. Gathercole, and you said, "no." Then I said ^{"and"} with respect to December ^{"?"} on the next page, and you said, "no." So you didn't discuss it with Gathercole in November or December and at 234-1 at the top:

"Mr. Shibley: You referenced a luncheon in September with Gathercole, does that help refresh your memory as to a discussion with him?

Sep 12/73
4.45-4.50 pm
V.H.

(Mr. Shibley)

"Mr. Dillon: I think that's the time that we probably - he discussed this - my friend Smith.

"Mr. Shibley: Yes. At a luncheon in September?

"Mr. Dillon: Well, I think we were on our way to lunch.

"Mr. Shibley: Yes. So that helps pinpoint that comment to you. And did he at any time indicate that the other Commissioners knew that it was Smith who was causing problems or complaining?

"Mr. Dillon: No.

"Mr. Shibley: Pardon?

"Mr. Dillon: No. I merely derived from the conversation that my friend, Smith, had written a letter to Mr. Seguin and that this was discussed. That's as much as I got.

"Mr. Shibley: So that, as of September, 1972, Mr. Gathercole knew that it was Smith who had written to Seguin?

"Mr. Dillon: Well, certainly, that's what he said to me anyway. So I assume yes."

Then later on, over at 2336-1, Mr. Genest asked that ~~these~~ questions be put to you.

Mr. Genest: Page Mr. Shibley?

Mr. Shibley: ~~2336-1. Two three three six one.~~

At the bottom of the page is where I am starting.

"Mr. Chairman: All right. ~~These~~^Y are still coming from me, Mr. Dillon, but I really don't intend to ask you very many more.

"Mr. Genest: As to the conversation₃ with Mr. Gathercole, when Mr. Gathercole is alleged to have told Mr. Dillon that Smith was creating a lot of trouble, I would like the witness asked if it is possible that that conversation could have taken place as late as May or early June of this year?

"Mr. Dillon: No, I think that would be impossible, Mr. Chairman, because my recollection was that this was something that had gone on at a commission meeting, and I attended all commission meetings from the time that I became an adviser to the commission.

(Mr. Shibley)

"Mr. Genest: When was the first commission meeting that the witness attended?

"Mr. Dillon: I can't be precise but I think it was sometime around the end of the year or early in the first of this year.

"Mr. Genest: Was the witness at any commission meeting when the Smith complaints were mentioned?

"Mr. Dillon: No.

"Mr. Genest: Is the witness aware of the evidence of Mr. Gathercole that the name of Smith was not mentioned at the commission meeting at which the matter was raised by Mr. Seguin in September, 1971?

"Mr. Dillon: I haven't read the evidence. I wasn't aware precisely of this, no.

"Mr. Chairman: I'm not too sure ...

"MR. Dillon: I'm sorry. It's 1972.

"Mr. Chairman: I am not so sure you need to read the evidence. Do you want to repeat the question?

"Mr. Genest: I'll put it in simpler terms.

"Mr. Chairman: I'm not so sure it was dependent upon reading the evidence, that was all.

"Mr. Genest: I just want to put to Mr. Dillon that I think the evidence of any witness who has been heard so far, including the commissioners who all gave evidence, was that the name of the complaining contractor was not mentioned.

"Mr. Shibley: Let's clear it up. Mr. Dillon, you quite voluntarily stated to me that on the way to that luncheon in September, Gathercole had used the phrase, "Your friend Smith has been making a lot of trouble". That was very spontaneous on your part. Isn't that so?"

And I was referring to the occasion of my interview with you.

"Mr. Dillon: That's right. I think that was the gist

Sept. 12/73
4.50-4.55p.m.
B.A.

(Mr. Shibley)

~~the subject of the communication I~~ of the communication I got. Maybe this would clear the thing up, Mr. Chairman. He didn't say that at a commission meeting, or anything of this kind. It was just ~~that~~ I recognized or realized then that this letter was the subject of the concern which was being expressed by Mr. Gathercole to me.

"Mr. Shibley: And it was of relatively recent vintage, so to speak.

"Mr. Dillon: I would say, as I explained ~~in~~ before, I don't know whether it would be one day, or one week before, but it just happened to be...

"Mr. Shibley: Yes.

"Mr. Chairman: Anything else, Mr. Genest?

Mr. Genest: No, except that you might expect a request from me to recall Mr. Seguin."

Mr. Shibley: Mr. Dillon, I must say that I find in the context of your ~~from~~ previous testimony the statement you now make, that on reflection, after you have had these discussions since you gave your evidence, that you have concluded that ~~your~~ ^{the} discussion with Mr. Gathercole did not take place before the middle or later part of May, 1973, to be ~~and~~

Mr. Genest: Was that a question or ^{an} editorial comment, Mr. Shibley?

Mr. Shibley: Well, I was just going to put the question. I would like you to reflect upon the answers that you gave on ~~you~~ the occasion of your original testimony before this committee, particularly in the context of it ~~was~~ ^{was} of recent vintage, in the sense that the Commissioners had met and obviously had met only within a recent period of time when Mr. Gathercole made that complaint to you. Now, I appreciate that the evidence you gave has other context ~~was~~

Mr. Genest: Perhaps those should be pointed out to the witness, Mr. Shibley. The most important one to me is the matter

(Mr. Genest)

Smith's complaints was public knowledge.

Mr. Shibley: Well, ~~xxx~~ that is confusing too because one minute he says. ~~and~~

Mr. Bullbrook: 2333-2.

Mr. Shibley: Thank you. He ~~xxx~~ said ~~and~~

Mr. Genest: 2333-2. I think you are quite clear.

"This thing was now out and a matter of public concern."

Mr. Shibley: That's right. I might ask the witness ~~and~~

Mr. Genest: If we could hear from the witness *instead of*

Mr. Shibley.

Mr. Shibley: That is what I want to do. I want to ask the witness, in the light of all of the answers he gave -- I think what is bothering me in my mind, Mr. Dillon, I'll put it quite directly to you, is this, that, when I said to you, "Was Mr. Gathercole nettled?", that was a term that you used when I interviewed you, that Mr. Gathercole was nettled. And I put it to you that having had this matter raised at a meeting by Mr. Seguin, that Mr. Gathercole did not delay until May of the following year before he expressed his chagrin. ~~and~~

Mr. Genest: Mr. Shibley; I'm sorry, I object to the line of questioning. We haven't even had the statement of Mr. Dillon. You have read it, but we haven't even heard a word of evidence from him yet. You are cross-examining on something that isn't yet on the record. He should have a ~~reasonable~~ chance of ~~and~~

Mr. Shibley: I beg to differ with you. I shortened his evidence by saying "Is that the evidence you want to make a matter of record?" ~~and~~

Mr. Genest: Oh, I didn't hear that.

Mr. Shibley: Well, then, you should listen, Mr. Genest.

Mr. Genest: I apologize. I didn't hear that. I thought you had just read it and gone on.

Mr. Shibley: No, I was very careful to have read it and

Sept. 12/73
4.50-4.55p.m.
B.A.

(Mr. Shibley)

~~xxxx~~ asked Mr. Dillon to make a matter of record that this is the evidence for which he has been recalled. Now, as I say, ~~what~~ is of interest to the commission, now, and it is of some importance because of what Mr. Gathercole, ~~and~~ I am sure, ~~sent~~ Mr. McCallum, ^{have} indicated, and what you have indicated in your letter, to know the terms of the timing whether you can relate in the sense that ^{was} ~~when~~ Mr. Gathercole saying, in a sense, "we had a meeting a few days ago, or within the last week, and your friend Smith has raised a lot of problems and why did you put him on to Seguin". Now, can you help us further as to time?

Mr. Dillon: I think, Mr. Shibley, when I finished giving my evidence yesterday, I felt that I had given ^{the} ~~the~~ story as I saw it.

(H-2436 follows)

Sept. 12/73

4:55-5:00 pm
C.B.

(Mr. Dillon)

~~When I finished giving my evidence yesterday I felt that I had~~
~~advised the story as I saw it.~~ I was disturbed afterwards when I realized that the statements with which I agreed, namely, could this meeting have taken place in September 1972, were raising doubts and were in conflict with evidence which Mr. Gathercole had given and I was not aware of this. This concerned me.

I spent a lot of time thinking about this and, as I explained, I took this action in an effort to clarify the situation as far as this committee is concerned and in an effort to rectify what I thought was evidence that I had given mistakenly on the basis of faulty recollection as far as the time was concerned.

Mr. Shibley: You see, Mr. Dillon - I'm sorry, go ahead.

Mr. Dillon: I thought I was helping. Perhaps I could say again the gist of this conversation was simply that "your friend Smith is causing a lot of trouble." You referred to part of the evidence which is on page 2333-2, and when I said it was a matter of public concern, what I meant was that this was out, it was a matter of public concern and now I was hearing it from the Chairman of Hydro.

Mr. Shibley: Mr. Dillon, in the context of the spontaneous manner in which you told me about that comment, did you not relate it to the fact that Mr. Gathercole was referencing discussions among commissioners?

Mr. Dillon: I did not; at any time I didn't hear Mr. Gathercole ^{Saying to me} that he had had a meeting with the commissioners. He simply indicated to me that my friend Smith was causing trouble.

Mr. Shibley: Was it a case where ^{you were} ~~it was~~ so to speak, ~~you were~~ in the doghouse with some of the commissioners for having put Smith onto Seguin? That was the expression, that your name was mud, on that account?

Sept. 12/73

4:55 - 5 pm

C.B.

Mr. Dillon: I think, yes, I was concerned, among other reasons, for the fact that I had taken this job on and that my effectiveness as far as the commission was concerned was going to be in jeopardy. I really had assumed when I was speaking to you initially and when I was giving evidence yesterday that this had been something that had come up at a commission meeting.

Mr. Shibley: Yes.

Mr. Dillon: When I talked to Mr. Gathercole last night he said this was—he said it was not a regularly scheduled commission meeting.

Mr. Shibley: That's what's disturbing, Mr. Dillon.

You see, when you were interviewed and again when you gave your evidence without benefit of discussion with others, you quite spontaneously gave your testimony that it was in September of 1972.

Mr. Dillon: With respect, Mr. Shibley, if I said or indicated that it was in September 1972, I would have ~~very~~ said that it could have been. It was on the basis of what I'm now quite sure to be an incorrect assumption.

Mr. Shibley: I came at it in a number of different ways in the sense of how recent had been the event of the commission meeting when this complaint was taken up, referable to the subsequent comment to you by Mr. Gathercole, and in that context it was of recent vintage.

Mr. Dillon: That was a judgement I was making and I still think perhaps it was a correct one.

Mr. Shibley: You see, by May of 1973, when you now peg the time, there had been press and public disclosure, so to speak, as early as December 1, 1972 when Mr. Nixon tabled his questions. If that was what was going to ~~spark~~ spark the kind of comment, ~~then~~

Sept. 12/73
5.00 to 5.05 pm
DT

(Mr. Shibley)

~~What was going to speak the kind of comment from Mr.~~
as you then --

Mr. Genest: Mr. Smith's complaints weren't out then,

Mr. Shibley:

Mr. Shibley: Well, Mr. Smith's complaints were known
to Mr. Fleck and Mr. Cronyn and God knows who, in July of -- I am sorry,
at least in October or November of 1972, and I am just wondering Mr. --

Mr. Genest: Mr. Fleck and Mr. --

Mr. Shibley: Cronyn.

Mr. Genest: -- Cronyn are surely not the public --

Mr. Shibley: No, but --

Mr. Genest: And when they tell something to Mr. Fleck
I hope you can't say that it's out and a matter of public concern.

Mr. Shibley: Well, Mr. Dillon, you had close contact
with Mr. Cronyn throughout the year 1972, did you not?

Mr. Dillon: I would say yes, off and on.

Mr. Shibley: And similarly close contact with Mr. Fleck

Mr. Dillon: I would say not.

Mr. Shibley: I see, and you had a number of contacts
with Mr. Gathercole?

Mr. Dillon: Could I correct that?

Mr. Shibley: Yes, surely.

Mr. Dillon: At the time that Mr. Fleck was executive
director of Task Force Hydro --

Mr. Shibley: Yes.

Mr. Dillon: ~~There~~^{it} was a short overlap when ~~he became~~^{sorry,}
executive director of COGP --

Mr. Shibley: Yes.

Mr. Dillon: We did meet regularly because we were in
the same office, but that was in the summer of 1971, I guess, so I guess
the answer is still no.

Mr. Shibley: Since you gave your evidence yesterday,
you have spoken to Mr. Raney, Mr. McCallum and Mr. Gathercole. Have
you spoken to anyone else?

Mr. Dillon: Not about the substance of this memorandum

Sept. 12/73
5.00 to 5.05 pm
DT

(Mr. Dillon)

I gave to you this morning.

Mr. Shibley: Well, have you --

Mr. Bullbrook: Mr. Shibley, I must say to you that I find this not entirely attractive to myself. I want to convey to you that my attitude towards ~~the~~ Mr. Dillon and the evidence that he has given, and I realize you are undertaking your obligation as counsel, I just want to convey to you as one member that because of the question of the use of the word "public", because of the fact that, for example, the publication of the Globe and Mail where Smith was mentioned was on April 30th and this alleged conversation now takes place in May, ~~because of the way that Mr. Dillon~~ more than anything else ~~because of the way that~~ Mr. Dillon has given his evidence as opposed to some other people in high places and the way they have given their evidence, I want to say to you that I want to accept the revision of his evidence.

Mr. Shibley: All right. I thank you very much.

In fact, I concur in the view you take and you have made my life very much easier by relieving me of pursuing the examination. Thank you, Mr. Dillon.

Mr. ~~Genest~~ Genest: Well, may I say, perhaps this is extracurricular. I think it takes a lot of courage for someone to do what Mr. Dillon did when he realized, and I am sure not because Mr. Dillon is not the kind of man to be influenced to tell untruths, when he realized and was man enough to come in here and admit he made a mistake. I am very grateful to him.

Mr. Bullbrook: Well, that's why I wanted to record this, but you see the problem, Mr. Chairman, of our counsel is that he has an obligation to undertake this because of the fact that he has been placed, sometimes with less than innocence, in this very position before.

Mr. Genest: I don't criticize Mr. Shibley at all.

Mr. Bullbrook: No, I know, I know. I realize you don't, but I guess that puts an end to it. I think we are all in agreement to accept --

Mr. Chairman: Well, Mr. Bullbrook, you have spoken. So say you all?

Mr. Shibley: That is the important thing. As

Sept. 12/73
5.00 to 5.05 pm
DT

(Mr. Shibley)

long as the committee are content, we can leave it.

Mr. Chairman: Thanks for your interjection, Mr.

Bullbrook.

Mr. R. G. Hodgson: I hope we will pursue this with ²⁵³⁷~~2537~~ Mr. Gathercole to some extent, because if you look at ~~2537~~ there are some questions that I asked Mr. Dillon and which I want Mr. Gathercole to answer.

Mr. Genest: I am sure Mr. Gathercole will be glad to deal with that.

Mr. Chairman: Did you want to ask Mr. Dillon any questions, Mr. ~~Hodgson~~?

Mr. R. G. Hodgson: No, thanks.

Mr. Chairman: Then thank you very much, Mr. Dillon, for your coming forward in this way.

Mr. Dillon: Thank you, Mr. Chairman.

Mr. Shibley: Can we have Mr. Coles?

~~Mr. Deane: It has taken a long time.~~

Mr. Chairman: Mr. Coles, you have been with us from the start but I don't think you have given any evidence under oath, although we have listened to your voice from time to time and I think your evidence unsworn is on the record. I assume that anything you have said that is on the record, you are prepared to swear to now as well, is that right?

Mr. Coles: I am indeed.

(H-2438 to follow)

H-2438-1

WILLIAM C. COLES, Sworn.

Mr. Shibley: Mr. Coles, I am introducing to you a two-page memorandum from your financial file which is not yet an exhibit, and I ask it be made the next exhibit, Mr. Chairman.

Mr. Chairman: 233.

Mr. Shibley: I'm particularly interested in the second page of that memorandum, Mr. Coles, which I ask the committee to look at.

The second page commences "\$34 per square foot," I guess.

Mr. Coles: That is right.

Mr. Shibley: And I would ask you to explain to the committee the import of the calculations shown on that sheet.

Mr. Coles: At the time I made these calculations all I was trying to do was to indicate that the figure of ^a75 per cent reduction rate that Mr. Houser had developed in his formula was not ^acorrect figure. If we are talking an 8 per cent factor, which at that time, of course, we didn't know what our rate was going to be, but if we are talking an 8 per cent factor any reduction in the value below \$34, the rental should only be reduced by 61 per cent, as opposed to being reduced by 75 per cent.

Mr. Shibley: I am more interested in the first column, frankly, Mr. Coles. I had noted from the Ames file that as late as October 4, 1972, there was a note that as much as \$50 million ^{might} ~~could~~ be borrowed respecting this transaction. And I put to you that the \$3.35 allowance for financing which was part of your position with Hydro, ^{or} ~~an~~ arrangement with Hydro, was an amount that would permit the funding at 8 per cent over 30 years of more than \$45 million, or, conversely, would permit the funding of \$45 million at a rate higher than 8 per cent. Is that correct?

Mr. Coles: I think that is correct, yes.

Mr. Shibley: And these calculations that you made here help to demonstrate that point, do they not? That in fact if the cost of your money, of \$45 million, had been as high as ~~9~~ 9½ per cent, that the amortized cost of that would be \$3.38, leaving a differential of \$1.46, which equates with the \$1.45 for maintenance cost. Is that not so?

H-2438-1

Mr. Coles: That is what my figures say, but unfortunately I made one rather obvious mistake and I was equating the \$34 on the gross cost of the building, when in effect we are getting ~~xxxxxx~~ paid rental on the rentable area of the building, and therefore I should

Mr. Shibley: There is about an 8 per cent variance.

Mr. Coles: Yes, there should be ~~an~~ 8 per cent more variance, so I think as far as the \$3.35 goes, I think about somewhat less than 8½ per cent is about all we could get it at.

Mr. Shibley: Well, I remind you that I have taken 9½ and yet that is on the net set-off figure of \$4.84. The figure that we should be really working to is \$4.92 as the actual rate before set-off. Now I put it to you that you could borrow as much as \$45 million at rates as high as 9½ per cent for ~~xxxxxx~~ an amortized cost of \$3.35.

Mr. Coles: No, that is not correct.

Mr. Shibley: That is not so. Well, what is the maximum rate of interest that Canada Square could have paid and still kept within the \$3.35 limit, so to speak, of its proposal?

Mr. Coles: I believe it is somewhat less than 8½.

Mr. Shibley: 8½? It could have gone to that amount? All right.

Mr. Coles: Not quite 8½ I don't believe, but just about ———
8-3/8 maybe. ~~xxxxxx~~

H-2438-2 follows

H-2439-1

September 12, 1973
5:10 - 5:15 p.m.
B.G.

(Mr. Coles; Shibley)

~~... \$122, it would have gone to that amount, all right,~~

~~Mr. Coles: Not quite \$122 I don't believe, but just about,~~
~~\$122 maybe.~~

Mr. Shibley: So that -

Mr. Genest: Mr. ~~Shibley~~ perhaps it would help ~~to~~ ~~clear~~
~~this~~ cleared up where the ~~\$3.35~~ \$3.35 came from, I have forgotten when
Mr. Houser was ~~in~~ ^{on} the stand, I don't know if it is vital, but it
might be useful, he told me, he got out a little Crown Trust table
and took 8 3/8 ~~and~~ and that's how he came to ^{it's} \$3.35 I think was Mr.
Houser's figure. And he just picked 8 3/8 ~~as~~ as a ball-park figure.

Mr. Shibley: I see, well all right then, let's start back
another way. Your proposal was for a rental of \$4.92.

Mr. Coles: That's correct, yes.

Mr. Shibley: And from that was to be deducted the cost of
maintenance of \$1.45.

Mr. Coles: That's correct.

Mr. Shibley: And the balance therefore, is \$3.47. Is that
correct?

Mr. Coles: That's right, yes.

Mr. Shibley: So that ~~the~~ that ~~the~~ \$3.47 is to fund the cost
of money and your profit, so to speak, on the on-going basis in terms
of maintaining the building. Is that correct?

Mr. Coles: That's right.

Mr. Shibley: Now, your cost of money, therefore, could have
ranged all the way up to \$3.47 and at that level you would have broken
even on an operating basis. Is that correct?

Mr. Coles: Well, it's not ~~quite~~ quite that ~~simple~~ simple,
Mr. Shibley, because -

Mr. Shibley: It may be an oversimplification ^{but basically} - ~~but~~ ~~basically~~

Mr. Coles: It is, quite a bit.

Mr. Shibley: But is that a correct basic approach to this,
however?

H-2439-2

September 12, 1973
5:10 - 5:15 p.m.
B.G.

Mr. Coles: Basic ~~approach~~ approach, but I think you have to take into account the other areas besides what Hydro is going to be leasing and that sort of thing. You are talking your net rentable square feet and then you are also talking the amount that Hydro is going to be leasing, which is less than the 1,208,000 sq. ft., they are only going to be leasing 1,124,000 sq. ft.

Mr. Shibley: Yes, there is a gamble on the commercial space.

Mr. Coles: Exactly.

Mr. Shibley: You might make money, you might lose money, depending on how successful you are in that respect.

Mr. Coles: Exactly.

Mr. Shibley: All right, just stay ^{ing} with these figures, because I think it important for the committee to understand this? ~~As~~ at the time you were negotiating your deal between July and when you got your commitment in November, you were working to a factor of maintenance of \$1.45, and ~~the~~ \$3.47 being what was left to fund and turn a profit. Is that correct?

Mr. Coles: Subject to that other comment I made, yes.

Mr. Shibley: Yes? Was any part of the \$1.45 intended to include a profit factor for maintenance?

Mr. Coles: No.

Mr. Shibley: None at all.

Mr. Coles: No.

Mr. Shibley: You fully expected that projected ahead your profit would be the full \$1.45. I am sorry, your maintenance costs would be the full \$1.45.

Mr. Coles: That's right, yes.

Mr. Shibley: So now, as it turned out, your actual cost of money is \$3.24?

Mr. Coles: That's right, yes.

Mr. Shibley: So you have a net amount of .23¢ a foot. Is that correct?

H-2439-3

September 12, 1973
5:10 - 5:15 p.m.
B.G.

Mr. Coles: Again, subject to the commercial area and the amount of rent that we will have to pay back to Hydro, and you know, a lot of other things, but basically yes.

Mr. Shibley: Well, do I take it that the amount which Canada Square -

Mr. Coles: ~~I am~~ ^{And} also assuming, Mr. Shibley, that the building doesn't cost us more than \$45 million.

Mr. Shibley: Yes, I understand; but again, having regard for the document in the Ames ^ffile, as late as October 4, Mr. Moog was talking in terms of a loan of \$50 million. Now, I want to convert the thing and say to you, how much would \$3.47 fund by way of a ~~loan~~ loan? How many millions of dollars?

Mr. Coles: I haven't really worked that figure out, I am afraid.

Mr. Shibley: I see.

Mr. Finlayson: Assuming 8 per cent and working back from it.

Mr. Shibley: Eight per cent running, yes, and going back to an 8 per cent factor, You see, I was trying to understand the fact that the amount that was to be borrowed apparently was not fixed until well on into the making of the formal documents; in fact, as late as October, I think, Mr. McCallum said, that the amount was still uncertain. Is that right?

Mr. Coles: I think part of the negotiation was the

(Tape H-2440 follows)

September 12th, 1973

5.15 - 5.20 pm

2440 - 1

AA

~~Mr. Shibley:~~

~~He said that the number was still uncertain. It~~
~~that figure~~

~~Mr. Genest:~~ I think that part of the ~~negotiation~~
was the setting of the figure ^{of} \$3.35 and the setting of the
\$45 million.

Mr. Shibley: That's what I don't understand,
because there has been so much discussion about you have
\$1,300,000 square feet at \$34 a square foot.

Mr. Genest: That wasn't settled, Mr. Shibley.

Mr. Shibley: I realize.

Mr. Genest: Until late.

Mr. Shibley: Are you telling us then that the
\$34 per square foot figure was not settled until October
1972?

Mr. Genest: How many square feet?

Mr. Finlayson: It's the number of square feet
that we are discussing.

Mr. Genest: The number of square feet I'm discussing.

Mr. Shibley: All right. All right. But, again,
coming back to this, as I say, I would like to understand
why this was an open-end situation. I am not imputing ^{anything} to ~~you~~ it,
I am just trying to understand why Mr. Moog felt that he could
borrow as much as \$50 million for this building.

Mr. Finlayson: Well, just a minute, Mr. Moog said
that the reason he .

Mr. Shibley: This witness is quite capable of
answering.

Mr. Finlayson: I know, but you mustn't misquote
Mr. Moog to the witness, because what Mr. Moog said was
that he started off with \$50 million because he didn't want
to end up by asking for less than he was going to require
later on. This is all part of - that's for openers. "I
want \$50 million."

September 12th, 1973

5.15 - 5.20 pm

2440 - 2

AA

(Mr. Shibley)

Mr. Shibley: I see. This is again part of the
then
selling thing, is it, or is it something _____

Mr. Coles: I would say that's it. Surely. You
know, you always shoot a little higher and _____

Mr. Shibley: All right. But was it _____

Mr. Coles: ~~was~~ It is very difficult to go
back up -- I mean in order to go up, period, but it is really
no problem to come down.

Mr. Shibley: Are you telling us then that so
far as your arrangement with Hydro is concerned, it was
a fixed multiple of \$34 times the net rentable square _____
I am sorry, \$34 times the gross area of the building, whatever
it turned out to be, that was a fixed arrangement? Is that
correct?

Mr. Coles: That was fixed sometime during
negotiations, yes.

Mr. Shibley: When? That's what I want to know.
When was that?

Mr. Coles: I couldn't honestly tell you.

Mr. Shibley: Then, Mr. Coles, will you please
explain to me, when was the \$34 pegged as a fixed price per
square foot?

Mr. Coles: Oh, I think that was pegged a long time
ago.

Mr. Shibley: That doesn't answer my question.
When?

Mr. Coles: In relation to what, then?

Mr. Shibley: In relation - was it after July ¹⁹ 1972?
the

Mr. Coles: Well, \$34, as far as I know, was in the
proposal.

Mr. Shibley: Well, that's what I am driving at.
It was fixed then, from the outset.

Mr. Coles: That's right. Yes.

(Mr. Shibley)

Mr. Shibley: And so all that was left to compute the amount of the mortgage was to multiply that against the gross area of the building?

Mr. Coles: That's right, but the gross area of the building, I don't know whether that had been established at that particular time, ^{because we} ~~they~~ were still doing drawings and every-
thing else.

Mr. Shibley: Now, in the proposal — turning to that for a moment, have you got a copy of it?

Mr. Coles: No - I might have.

Mr. Shibley: It is exhibit 61. At page five, in particular, of the proposal — I notice the proposal said, "Based upon these ~~these~~ arrangements" and the arrangements that are ~~is~~ referenced is \$20 million in Swiss francs at 6-1/2 per cent, balance in US at approximately 7-3/4, "Based on these arrangements the ~~rental~~ rental rate would be \$4.92 per square foot per year. These arrangements have not been finalized and will require your full cooperation in assisting us to set up the necessary corporate structure ~~that~~ . . ." and we know what ~~that~~ was intended.

"If we are unable to borrow the required funds at these favourable rates there will be a ~~pro-rata~~ pro-rata increase in the rental rate up to a maximum of \$5.25 per square foot per year."

Now just stopping there, Mr. Coles, is it a fact that as at the time that Hydro was in receipt of your proposal, they didn't know ~~whether~~ whether they were going to be confronted with the rental rate of \$4.92 or \$5.25? It all depended upon the success of Canada Square in terms of ~~realizing~~ realizing financing at low ~~interest~~ interest rates.

Mr. Coles: I would say at that time, that's correct.

Mr. Shibley: That's the basis on ~~which~~ which the . . .

Mr. Coles: That's what the letter says.

September 12th, 1973

5.15 - 5.20 pm

2440 - 4

AA

(Mr. Shibley)

Mr. Shibley: ~~_____~~ proposal is made.

Mr. Coles: That's right.

Mr. Shibley: And that situation continued beyond
February 1? Is that right? ^{? only reference} ~~^~~ that date ~~as~~ the date when
Mr. Candy recommended acceptance of - or dealing with
Canada Square. That hadn't been resolved.

~~Mr. Coles: I honestly don't know Mr. Shibley~~
~~because I wasn't~~

2441 - 1 follows

Setp. 12/73

5:20-5:25 pm

C.B.

(Mr. Shibley)

~~acceptance or dealing with Canada Square, that hadn't been received.~~

Mr. Coles: I honestly don't know, Mr. Shibley, because ~~because~~ I never discussed anything with Mr. Candy until well on into the ~~the~~ after the ~~the~~.

Mr. Shibley: I should have asked you that.

Mr. Coles: well I guess ^{probably} the day ^{before} ~~the~~ the proposal was accepted.

Mr. Shibley: I'm getting so tired I forgot to ask you what your position is with Canada Square and when you undertood that obligation. Would you please tell the committee as a matter of record?

Mr. Coles: Yes I'm vice-president of finance.

Mr. Shibley: Yes and how long have you ^{held} ~~had~~ that position?

Mr. Coles: Well, I've been with Mr. Moog for some 12- year period, and I've been in one category or other in that area.

Mr. Chairman: When you say "vice-president of finance" you mean you are vice-president of the company in charge of finance.

Mr. Coles: That's right.

Mr. Chairman: Not vice-president of finance.

Mr. Coles: No.

Mr. Chairman: I was wondering if there was anybody senior to you in the financial field there, that was president of finance.

Mr. Coles: No.

~~Deans:~~

Mr. Walker: ~~XXXXXXXXXXXXXXXXXXXX~~ I thought Moog was the president of finance.

Mr. Coles: He ~~is~~ is the president of everything.

Mr. Walker: ^{"I am"} ~~the~~ the president."

Sept. 12/73
5:20-5:25 pm
C.B.

Mr. Shibley: Now I'd like to return to this range, though with which Hydro was confronted in terms of a proposal of \$4.92 to \$5.25, you say you didn't deal with Mr. Candy or Hydro until when?

Mr. Coles: I believe my first contact was in that meeting of July 18th.

Mr. Shibley: Well, I'd like to go to that - I'm sorry before I do, did you assist in making up the proposal?

Mr. Coles: Yes, I helped.

Mr. Shibley: Did you run calculations as to such things as maintenance costs?

Mr. Coles: No, I don't think so. *We just*

Mr. Shibley: Did you run calculations as to the profit that you would realize on the transaction?

Mr. Coles: No.

Mr. Shibley: Have you to this day run calculations in that respect?

Mr. Coles: No.

Mr. Shibley: Did you run calculations as to cash flow?

Mr. Coles: Not really, no.

Mr. Shibley: On what basis were these figures as set forth in this proposal established?

Mr. Coles: The amount of the rental calculation is ^{it} relatively simple formula, it's how you put the figures, the unknown quantities, in the slot that causes you all kinds of grief. It is merely a matter of estimating at the time what our cost of construction was going to be and guessing at what sort of interest rate we might be able to borrow the money and determining what the remainder of the cost would be, and the difference is it.

Mr. Shibley: Mr. Coles, I was struck by the difference in content of the working papers that were part of the production of the other developers and the lack of such ^{work-up} papers ⁱⁿ within your own productions. You agree that there are no such working papers among your material?

Mr. Coles: That is right. There were none made up.

Mr. Shibley: And are you telling me that you made this submission sort of ~~by~~^{by the} seat of your pants? ~~We~~^{WE} are talking about the financial ^{cost}.

Mr. Coles: No, I wouldn't say we made it ~~by~~^{by the} seat of our pants at all. We have a pretty good idea of what it costs us to do these things from our experience.

Mr. Shibley: Whey you say you have a pretty good idea, the other developers seem to have taken and very carefully refined their calculations. I'm thinking of the Ellis-Don cent-by-cent computation of the maintainance costs, if you remember, and it toted up to about \$1.09 and with escalation they took it to \$1.35. You didn't do any such tabulation.

Mr. Coles: I believe that is ~~why~~^{why} Y and R, is it not?

Mr. Shibley: Y and R, yes, thank you. You didn't do any similar estimating?

Mr. Coles: No.

Mr. Shibley: Did you feel that you had enough elbow room built into this proposal that you weren't in jeopardy of suffering a financial loss?

Mr. Coles: Oh, I think we - you are talking a lot of imponderables here, because, first of x all, you are putting your proposal in on the 24th of January, You don't whether the contract will be signed by the middle of February or by the 1st of November. You don't know whether you are going to start construction then. There are all kinds of imponderables. To work out of projection down to the last nickel, ~~it~~^{it} is really of no particular value at all.

H-2442-1

(Mr. Coles)

~~So to work out the projection to the last nickel is really of no~~
~~practical value at all.~~ You have got to use an awful ~~lot~~ lot of rule of thumb calculations.

Mr. Shibley: Yes, Mr. Coles, the fact of the matter is that when you made this proposal it was anything but a firm proposal. The range of rental rate went from \$4.92 to \$5.25 - that is a very broad spread. Would you agree with me?

Mr. Coles: Depending upon interest rates I suppose it was. Yes.

Mr. Shibley: Particularly when one realizes that in the first instance even the \$4.92 wound up being the ~~the~~ highest of the four submissions made by the four developers, and \$5.25 would have been another 33 cents over and above that.

Mr. Coles: You have to remember one thing, Mr. Shibley, when you say ~~the~~ \$4.92 was the highest of the four developers, you have to equate that to what they submitted would be their cost of construction. The two have to equate obviously.

Mr. Shibley: Well actually some of them didn't submit any cost of construction, I don't believe, but in any event in looking at the...

Mr. Coles: Well it certainly was determined at some later date, and if you have taken a look at the proposals as I have as they came into evidence, why you can see that.

Mr. Shibley: You see, for example, Horizon and Y and R; Horizon was \$4.46; Y and R was \$4.50, and they didn't allow for any range; your submission ranged from \$4.92 to \$5.25, and you never did define that until sometime, I believe in April has been fixed.

Mr. Coles: I thought it was the end of March as I recall, when the memo came out.

Mr. Shibley: Maybe you are right. I could stand corrected.

Mr. Coles: I wasn't privy to that decision being made.

Mr. Genest: Mr. Shibley, wasn't there a variation in ^{one of the} ~~Horizon~~ proposals depending on the cost of money?..

Mr. Shibley: No, one of them said "We'd like you to consider it", but I don't think they weren't firm.

H-2442-3

Mr. Genest: Maybe I'm wrong. Sorry.

Mr. Coles: I thought Ellis-Don did submit a later quotation.

Mr. Shibley: I'm sorry, you are right. Ellis-Don...

Mr. Coles: When their rate of interest went up they wanted extra number of dollars for it, or something like that.

Mr. W. Hodgson: Mr. Shibley; What was the difference between Y and R. Canada Square put a firm rental base in for 30 years, where Y and R, didn't they want to renew it at the end of, take a look at it at the end of 10 years to see whether, how things were going.

Mr. Coles: That's right. If you take a look at almost all of the proposals there is a little bit of elbow room in each one isn't there?

Mr. Shibley: I am just wondering.

Mr. Coles: I mean Y and R had the 10-year opening on the interest rate if you wanted to let them do it. Horizon had \$1.40 as ^a 1971 base which gave them some movement. They all had a little bit of elbow room in them.

Mr. Shibley: Mr. Coles, in effect, is what you are telling this committee, that these proposals were of a preliminary nature and required ongoing negotiations to refine and make more precise their terms?

Mr. Coles: Well I suppose they ^{probably} were fairly preliminary.

Mr. Shibley: Well in the case of your own, I mean the rental rate itself was still a ~~xxxx~~ variable at the time. Is that correct?

Mr. Coles: That is right. That's what what we...

Mr. Shibley: And you didn't know the square footage of the building at that time.

Mr. Coles: Well that shouldn't affect it particularly, if it is on a per square foot basis.

Mr. Shibley: You are quite right. You were still speculating as to the need for a Crown corporation to intervene regarding withholding tax?

Mr. Coles: That's right.

H-2442-3

Mr. Shibley: That was still an iffy matter.

Mr. Coles: Exactly, yes..

Mr. Shibley: Even in terms of design, you hadn't yet reached a point of firming up concepts that would really form a basis for specifications?

Mr. Coles: Well based upon ~~some~~ our past experience we, in our discussions with Hydro, I think we in examining presumably the plans in the previous building, we had a pretty good idea of what Hydro wanted and how much that particular ~~type~~ type of building would cost us, otherwise we wouldn't have arrived at the \$34 we put in our proposal.

Mr. Shibley: Well that \$34 bothers ~~me~~ me a bit because it happens to coincide precisely with the take off of cost that your firm made of the plans for the original building. Do you realize that?

Mr. Coles: No, I didn't, but I don't think it is particularly significant.

Mr. Shibley: It is in exhibit already that the... and I had thought it was a take off of the cost of the building that is under construction because the figure is \$34. ~~That is correct~~

H-2443-1 follows

Sept. 12/73
5.30 to 5.35 pm
DT

Mr. Coles: You realize in this particular instance you are comparing apples and peaches, because in the \$34 of the original take-off, it is strictly construction costs --

Mr. Shibley: Yes.

Mr. Coles: — And ~~then~~ ⁱⁿ the \$34 in this quotation we are talking construction costs, architects' fees and financing and everything else, so I don't think that there is really any basis of comparing a \$34 figure in one and \$34 in the other.

Mr. Shibley: Well, OK then, Mr. Coles. I am happy to have you explain that because I am taking it, then, that ~~in~~ exhibit 206, which totals up to \$34 being the cost of construction of the first building, it is only a coincidence that that is the figure that you pegged for the overall cost of the new building.

Mr. Coles: As far as I am concerned, because, you know, if you take away your financing costs, we are not talking a \$34 cost of construction per se without ^{other} ~~the~~ items in.

Mr. Shibley: All right. Now, when you were talking \$34 cost, ~~you were talking~~ you say you never had discussion with Candy before July 18, but did you have discussions with Mr. Moog in respect of what was intended when you talked of a \$34 cost of the building?

Mr. Coles: I don't really know what you mean by that question. If you are talking a \$34 cost, obviously the cost to us is all in.

Mr. Shibley: Yes, well, what I want to know from you is what you understood as between yourself and Mr. Moog prior to and up to July 19, 1972, when \$34 per square foot was discussed as a cost to be applied to this building. You have heard Mr. Candy explain that he understood cost to include cost of construction, design fees and interim financing. Now, was that your understanding of what the \$34 figure was meant to include?

Mr. Coles: ~~That's~~ ^{That's} right.

Mr. Shibley: It was?

Mr. Coles: Yes.

Mr. Shibley: As of July 19?

Mr. Coles: That's right.

Sept. 12/73
5.30 to 5.35 pm
DT

Mr. Shibley: So that you confirm what Mr. Candy says was the understanding as of the date the commission authorized entering into negotiations for a contract with Canada Square? Is that correct?


Mr. Coles: Well, put it this way, Mr. Shibley. That was what our estimated costs were, yes.

Mr. Shibley: Well --

Mr. Coles: I am a little concerned about that whole area and I don't know whether this is the time to discuss it or not but --

Mr. Shibley: Well, sure, go ahead.

Mr. Coles: I would like to get that in the right context. At that particular meeting, and I am not sure I was there for the whole meeting but I certainly was there when we were discussing the idea of costs, up until that time we were discussing an estimated cost of \$34 per square foot with ^athe rental rate of \$4.92. Now, Mr. Candy came up and he said, "Well, supposing it doesn't cost you \$34, would you be prepared to reduce the rental accordingly?" And we said to Mr. Candy, "Well, supposing it cost us more than \$34, would you be prepared to increase the rent?" And he said, "Oh, no, we wouldn't do that." So ~~that~~ at that point we said, "Well, that's fine, if that's what you want, we will go along with that one, but on that basis, because we can't estimate our costs that accurately at the moment because we haven't ^{what our} ~~described the building and we don't know~~ ~~what our~~ interim financing is going to be, you know, all kinds of unknown quantities, in there, we would like some elbow room to move around so that there's some margin for errors, contingencies, you name it. We want something in there." So ~~that~~ at that point, we suggested that we work out some type of arrangement whereby there would be some elbow room left for us because we hadn't established the interest rate on this project at that time. We didn't, as I say, know what the ~~construction costs were going to be. We knew that.~~



(H-2444 to follow)

H-2444-1

(Mr. Coles)

~~was project at that time, we didn't as I say, know what the~~
construction costs were going to be. We knew that rates were probably rising and that certainly inflation was pretty rampant and, as I say, at that time, we were discussing it in July, we didn't know whether the contract was going to be signed, say by August 1st, or who knows, maybe ~~the~~ February 1st the following year. You just can't predict how fast or how long the negotiations are going to be going on and how soon we could get the shovel in the ground, and maybe we wouldn't have the building finished until 1976. All kinds of unknown quantities ^{are} in there, so we said, we want some elbow room. If you are not going to give us any change to pick up any additional rent on the upside if we overshoot our costs.

Mr. Shibley: Right. Now, then, this was at the meeting of July 18th?

Mr. Coles: That's right.

Mr. Shibley: What ~~did the elbow room take~~ form did the elbow room take?

Mr. Coles: I don't think we had really established what form that would take. All we had said is that we wanted some elbow room. Now, I don't know, I am not sure at that time whether Mr. Candy agree_d with us or disagree_d with us, but that was our definite point of contention and we made that point from day one and we made that point right down to the final wire, and this was what ~~a~~ a good deal of the hassle over this appraisal value or whatever you want to call it, the \$34 question, is all about.

Mr. Shibley: So, the hassle in this committee is just an extension of the hassle that you were having when you were making the deal.

Mr. Coles: Precisely, precisely.

Mr. Shibley: All right. Now, I want to go back. In the meeting of July 18, 1972, was Mr. Candy's position then that when

Sept.12/73
5.35-5.40p.m.
B.A.

(Mr. Shibley)

he talked of \$34.00 he only intended ~~the~~ the inclusion of cost of construction, design fees and interim finance. Was that his position?

Mr. Coles: ~~Was~~ That may have been his position but I want to make it eminently plain, it was never our position and I dispute the fact that Mr. McCallum has suggested that we were welching because I don't, in my own mind, feel that we ever did welch on that, ~~and~~ I think that was one point of contention that ~~and~~ I guess we never did resolve to everybody's satisfaction.

Mr. Shibley: Just to clear that up; do I take it that before this meeting of July 18, that there had been agreement, however, between Mr. Moog and Mr. Candy, that only those three elements should enter into cost? Until July 18?

Mr. Coles: I don't really think....

Mr. Shibley: I thought you had said that earlier, that that was agreed to between you.

Mr. Coles: No, I don't think that we had ever discussed what figure we were talking about when we were talking costs.

Mr. Shibley: No, no, that is not what I am talking about. I am talking about...

Mr. Coles: I misunderstood you.

Mr. Shibley: I am talking about,...

Mr. Finlayson: You are talking about the concept that went into it.

Mr. Shibley: I am talking about the elements that entered into making up the cost, leaving the amount aside for the moment. I had understood you to say earlier that; up to July 18, yes, it was the agreement between Mr. Candy and Mr. Moog that only those three elements should enter into the costs.

Mr. Coles: I'm sorry if I said that was their agreement. What I meant to say is that was what was in our figures.

Mr. Shibley: Yes, so that you, when you say your figures...

Mr. Coles: I don't know whether Mr. Candy ever agreed, or

Sept.12/73
5.35-5.40p.m.
B.A.

(Mr. Coles)

whether we even discussed that figure, in fact, I am sure we didn't discuss that particular, well, I am not sure because I wasn't there all the time, but I don't think we did.

Mr. Shibley: Mr. Coles, I am getting the picture now that July 18 was sort of a turning point in a sense, but that up until July 18 there was a basic understanding that the \$34.00 was to be a cost figure including only those three elements. Then, on the meeting of the 18th, because of all the imponderables, the subject was re-opened then on the basis of, ~~was~~ well, depending on what the costs are going to amount to, on the upside or the down side, we want some elbow room, and that opened up the whole debate on whether it should be cost or appraised value.

Mr. Coles: I think that is basically it, yes.

Mr. Shibley: Is that a fair statement of what transpired?

Mr. Coles: I think probably that is it, yes.

Mr. Deans: I'm not sure I understand what Mr. Coles means.

Mr. Chairman: Mr. Deans.

Mr. Deans: I am asking Mr. Shibley. I am not sure I understand what Mr. Coles is meaning by the words "elbow room".

(Tape H-2445 follows)

Sep 12, 1973
5.40-5.45 pm
V.H.

(Mr. Deans)

I understand what Mr. Coles is meaning by the word "elbow room" -- or the words, "elbow room".

Mr. Shibley: Would you like to comment on that?

Mr. W. Hodgson: Maybe Mr. Deans' question would be more suitable if he asks him what elbow room they got?

Mr. Deans: I thought that was going to come.

Mr. Shibley: Well, at the moment I am just trying to understand the sequence of events because we now have got concurrence, I think, that up to July 18 the understanding on both sides was that costs were to only include the three elements that I have been referring to. That's so?

Mr. Coles: That's so.

Mr. Shibley: Then you had ~~another~~ meeting with Candy on the 18th which is the subject of the memo of that date, exhibit 211? Is that right?

Mr. Coles: Yes.

Mr. Shibley: And it was then and only then that the question arose about, well, you didn't know how long it was going to take to formalize the arrangements, you didn't know what your cost of financing ...

Mr. Coles: No. No. No. The question ^{has} arose at that time ^{was} that if we didn't hit \$34, would we reduce the rent?

Mr. Shibley: I am sorry. You are right.

Mr. ~~W.H.~~ Coles: That's the question that arose on that date.

Mr. Deans: And that's when you looked for the ^{elbow} ~~elbow~~ room?

Mr. Shibley: Yes.

Mr. ~~W.H.~~ Coles: Well, because he said, "what happens if it goes over the \$34?"

Mr. Deans: Yes, I understand. I understand all of that.

Mr. Shibley: Now the picture is becoming clear.

Mr. ~~W.H.~~ Coles: What do you mean, Jack?

Sep 12, 1973
5.40-5.45 pm
V.H.

~~Mr. Coles:~~ I will get to that. I want to get the sequence, though. So at that meeting, what you are really saying is, if Candy had said, "Fine, we will stick with \$34," you were prepared to take your chances as to all the variables ^{that} ~~and~~ still confronted Canada Square? Is that right?

Mr. Coles: That's correct.

Mr. Shibley: And live with a definition of cost which included only those three elements, is that right?

Mr. Coles: That's right. And there would be no — ~~that~~ that was the \$34 value that we had put on that building and ~~that was the value that~~ we were going to produce a building for \$34 and a rental rate of ~~four dollars a square foot~~ ^{\$4.72}. So we were still talking value again.

Mr. Shibley: When Candy said that he wanted to have Hydro participate in any savings should the costs be less than \$34, you then said, "Well, if that's going to be the case, ~~we want~~ and you are not prepared to give us something on the upside, should the costs exceed \$34, we want some elbow room?" Now what was the elbow room to be?

Mr. Coles: You mean how much?

Mr. Deans: What did you mean?

Mr. Shibley: What form?

Mr. Coles: Well, I suppose because we didn't know what the costs were eventually going to be, or what our interest ~~rate~~ ^{rate} was going to be, or anything else, we wanted some room to manoeuvre.

Mr. Shibley: Are you talking about the rental rate?

Mr. Deans: That's what I am trying to get at. What do you mean by "you want some elbow room?" I understand what the term means, but ~~that was the value that~~ did you mean that you wanted some flexibility in the \$34, ^{or} ~~or~~ ^{did} you want some flexibility in the rental rate, ^{or} ~~or~~ ^{or} did you want some flexibility in the \$45 million?

Mr. Coles: No. Some flexibility in the \$34.

Sep 12/73
5.40-5.45 pm
V.L.

Mr. Deans: ~~What was the~~ In what way? Can you tell me what you mean by that? You want ^{ed} some flexibility in it.

Did you want to be able to have a figure of \$32 value and not ^a affect the rental?

Mr. Coles: That would be a possibility, yes.

Mr. Deans: What did you have in mind?

Mr. Coles: We didn't have anything in mind except that we wanted some room to manoeuvre, that hopefully the construction costs would not be \$34 but on the other hand we didn't know how much they were going to be.

Mr. Shibley: Well, Mr. Coles, I think maybe the draft that's appended to this exhibit may give us some hint of what you had in mind. Did you have in mind, in terms of elbow room, that the computation of the \$34 would be based upon a ~~and~~ dividing factor of usable square feet as opposed to gross square feet? Was that one of the elbow rooms?

Mr. Coles: ^{That's} One of the elbow rooms, yes.

Mr. Shibley: So that, let's say the building cost \$43 million, by dividing 1.2 ^{million} ~~million~~ rather than 1.3 million into that, you would come up with your \$34 ^{per} square foot? Is that right?

Mr. Coles: That's correct.

Mr. Shibley: So that was one way you intended some elbow room.

Mr. Deans: That's what I wanted to find out.

Mr. Coles: That's right.

Shibley: ~~Mr. Deans:~~ And the other way you expected some elbow room ...

Mr. Finlayson: Well, I suppose that exhibit 209, the letter of August 24, is an example of what would be elbow room.

Mr. Coles: That's right.

Mr. Shibley: Yes, thank you. Exactly. This is the letter of August 24 — the witness may have that. Thank you, Mr. Finlayson, that is of help.

Sept. 12/73

5:45 - 5:50 pm

C.B.

(Mr. Shibley)

~~... you are financing that is a help.~~ Were the items (a) through to (g) that you would feel that you wanted to have included in the calculations of the \$34, is that so?

Mr. Coles: That is correct, yes.

Mr. Shibley: At the meeting of July 18, had you brought it to Mr. Candy's attention, had you or Mr. Moog brought it to his attention, that it was items (a) through to (g) as per exhibit 209, that you had in mind in the computation of the \$34 per square foot?

Mr. Coles: I don't believe we had reached that particular point. ^{All} ~~As~~ we were trying to do was establish a principle at that time that would give us some elbow room and we hadn't decided, as far as I know, of any particular detailing way of doing it.

Mr. Shibley: Did you talk, for example, in terms of Hydro paying royalties?

Mr. Coles: I don't know whether we got into any great detail at that time. I think we were still talking ^{of} principle.

Mr. Shibley: Did you talk of factors such as 10 per cent for overhead, was that mentioned?

Mr. Coles: I don't believe it was, no.

Mr. Shibley: Or 10 per cent for profit on construction, was that mentioned?

Mr. Coles: I don't think so. As I say, I don't really think that we got into any particular details of that particular time and we had ~~not~~

Mr. Shibley: Was the cost of interim financing at ~~the~~ a rate of 15 per cent discussed?

Mr. Coles: No, I don't think so. As I say, I don't really think ~~was~~ discussed this letter at all, it hadn't really materialized

Mr. Shibley: I know the letter hadn't.

Mr. Coles: No, but even the ideas contained in this letter hadn't materialized at that time.

Sept. 12/73

5:45 - ~~XXXX~~ 5:50 p
C.B.

Mr. Shibley: Did Candy leave you with the impression that he was going to go along with all this elbow room that you had in mind?

Mr. Coles: I don't know whether he did or not. I think we were pretty darned adamant in our position on that. As I say, if you can't get it on the upside, then we didn't want to be penalized too much on the downside.

Mr. Shibley: I must say that you are clearing up something in my mind.

Mr. Coles: Our whole theory in the development business is to create value and the way we go about is our expertise and I'm sure Mr. Moog. ~~knows~~.

Mr. Shibley: ~~By~~ Create value, you mean make money.

Mr. Coles: Pardon?

Mr. Shibley: Create value, does that mean make money?

Mr. Coles: Well, I hope we would make some, yes; we are certainly not going through the exercise for nothing. I can assure you of that, at least I hope we aren't.

Mr. Shibley: Exactly, I didn't realize what you meant when you said create value, whether we are talking about the same thing.

Mr. Shibley: Now I want to go back to exhibit 209. You see Mr. Bradshaw must have received instructions somewhere along the line to draft a letter agreement in these terms and I had been wondering where he got that instruction and because of his privilege I didn't ask him it, but I will ask you. When did Mr. Bradshaw receive instructions to prepare a letter setting out terms such as are here contained.

Mr. Coles: I would think it would probably be sometime later on, after the July 18th meeting. If I'm not mistaken, I just happen to recall it because of what he said to me when he was in the city in July this year, that he ~~was~~ usually goes away during July, So I presumed that he wasn't even in the city

Sept. 12/73
5:45 - 5:50 pm
C.B.

(Mr. Coles)

in July 1972, but I may be wrong.

Mr. Shibley: Well, were these terms as set out in this letter ever discussed with Mr. ~~Candy~~ prior to the submission of the exhibit.?

Mr. Coles: ~~Not~~ to my knowledge, they weren't, no.

Mr. Shibley: So this was really Canada Square trying something on for size?

Mr. Coles: I would say that's right, yes.

Mr. Shibley: All right. Again this was part of the ~~the~~ *and* ~~the~~ your argument for claiming those various items was the elbow room you were talking about?

Mr. Coles: Exactly.

Mr. Shibley: ~~You~~ *you* want to share in something - and the savings ~~of~~ *water* \$34 you are going to have to include in the evaluation of the building all these elements of cost.

Mr. Coles: Because we were carrying the risk on the upside.

Mr. Shibley: I realize.

Mr. Coles: If it went over that we weren't going to get a plus ~~nickel~~ *nickel* for it, ~~so~~ *get* there is no reason why Hydro should get all the benefits of us being below that, if we happen to be below. ~~no~~

H 2447 to follow

H-2447-1

September 12, 1973
5:50 - 5:55 p.m.
B.G.

~~Mr. Shibley:~~
~~... we weren't going to get a plug, nickel for it, so there is no~~
~~reason why anyone should get all the benefits of us being below that,~~
~~it was supposed to be below.~~

Mr. Shibley: And, of course, and as ~~soon~~ ^{at}, to be fair, ^s at July 18, you had gone firm on the rental rate of \$4.92.

Mr. Coles: That's right; ~~that's right~~ yes we had.

Mr. Shibley: So the ~~the~~ risk inherent in the transaction really relates to the cost of construction.

Mr. Coles: And the interest rate.

Mr. Shibley: Well, at that time interest ~~also~~ also.

Mr. Coles: ~~Absolutely~~ Absolutely.

Mr. Shibley: ~~Now~~ Happily you got your financing at a favourable rate of 8 per cent.

~~#~~ Mr. Coles: That's right, but we didn't know what we were going to get ~~at~~ ^{it at} at that ~~the~~ time.

Mr. Shibley: At that ~~the~~ time, right. But, the continuing risk would appear to be the cost of construction of the building, and in that respect Candy was insisting on ---

Mr. Coles: Well, let's put it this way, once we settled on ^{then} the interest rate, ^{the} continuing risk was the cost of the construction of the building.

Mr. Shibley: That's right.

Mr. Coles: Yes; and the continuing possibility of maintenance ^{that} cost escalating by the time we started out in 1977; I guess 1977 is when Hydro starts paying any ~~escalation~~ ^{escalation} on ~~it~~ that.

Mr. Shibley: Yes; now just coming back to the ~~the~~ discussion of July 18, because it is now appearing to have been an even more vital meeting than had appeared to this point of time. ~~Was~~ Was there discussion at that time as to the allowance for maintenance? ~~Do~~ You'll notice the ~~the~~ first paragraph of the memorandum starts off 'prices by others regarding annual expenses range from \$1.25, \$1.40; Candy allows \$1.45.' ^{Was} Was there discussion about that?

September 12, 1973
5:50 - 5:55 p.m.
B.G.

Mr. Coles: I don't recall any discussion on that, no. As I say, I may not have been in the meeting at that particular time. I ~~certainly~~ certainly don't recall any *prices*.

Mr. Shibley: Do you know how Canada Square, and in particular Mr. Moog, had the figures ~~may~~ \$1.25 ^{to} \$1.40?

Mr. Coles: I suppose it's an educated guess. I really don't know. You know, there are all kinds of —

Mr. Shibley: Well, Mr. Coles, I'll tell you that the actual range ~~he~~ went from \$1.23 to \$1.40. Are you saying that it was only guesswork on Mr. Moog's part that caused him to be that close to the range of the other developers?

Mr. Coles: I believe that's what he said; I don't know anything any ~~different~~ differently, certainly.

Mr. Shibley: I see. You have no ^{information} ~~information~~ that Mr. Candy provided the figures to him?

Mr. Coles: No, I couldn't say that.

Mr. Shibley: And then, the third paragraph says that "Mr. Candy has agreed that the \$34.00 per sq. ft. calculation shall be based on net ~~usable~~ ^{he} usable." Did ~~he~~ in fact agree that day?

Mr. Coles: I don't really think he did. It seemed fairly obvious ~~from~~ his testimony to-day he didn't ~~really~~ really understand, or understand to-day, what "net usable" means, in our terms.

Mr. Shibley: All right, so just to be clear on that, because I think it is very important to Mr. Candy —

Mr. Coles: Yes, I appreciate that.

Mr. Shibley: — he did not, in fact, agree that the ~~calculation~~ calculation should be based on a net usable square footage

Mr. Coles: No, as I say, I think we just discussed in general terms the elbow room and how we were going to ~~achieve~~ achieve that elbow room. I ~~don't~~ don't think we had established at that particular time.

Mr. Shibley: All right; and then the second last paragraph, Mr. Coles, "It was agreed that we iron out the \$34, per sq. ft. question in principle, as per the attached ~~draft~~ draft, but we

September 12, 1973
5:50 - 5:55 p.m.
B.G.

(Mr. Shibley)

would not finalize the language at this moment to avoid questioning by the Commission in to^morrow's meeting". Now, was it any part of the discussion between Mr. Candy and Mr. Moog and yourself that Mr. Candy would avoid finalizing the language of an arrangement with Canada~~█~~ Square in that regard to avoid questioning by the Commission at the meeting of July 19th?

Mr. Coles: I wouldn't say so, no.

Mr. Shibley: It was not[?]

Mr. Coles: No, it was not.

Mr. Shibley: This is not a true statement of any agreement between Mr. Candy, ~~Mr~~ yourself and Mr. Moog?

Mr. Coles: I don't think so. I think it was ~~a~~ sometimes Mr. ~~Moog~~ gets a little ~~bit~~ ^{as to} carried away ~~and~~ ^{as to} what he thinks, you know, what oth er ~~the~~ people have agreed to and so forth, but I don't ~~ta~~ think that there was any question in my mind that Mr. Candy had agreed to it at all.

Mr. Shibley: Well, I must say Mr. Coles, I think we're all relieved to have you confirm ~~Mr. Candy to agree to the arrangement~~

(Tape H-2448 follows)

H-2448-1

~~Mr. Shibley will only want to say, Mr. Deans, that~~
~~we have arrived to have you confirm Mr. Candy in respect of that~~
matter, and I think we are obliged to you for doing so with such
frankness.

Mr. Chairman, it is five to six and I have some further
questions of the witness.

Mr. Bullbrook: Did you want to continue tonight?

Mr. Chairman: I suggest we adjourn now until 8 o'clock this
evening.

Mr. Shibley: I would like to ask Mr. Genest, ^{if} we are
going to resume at 8 o'clock, could we have Mr. Gordon, Mr. Dean
or Mr. Lamb or any combination?

Mr. Genest: All three. They will all three be here.

Mr. Deans: Mr. Chairman, I simply want to record that I
can't be present this evening due to a previous commitment.

Mr. Chairman: I understand Mr. Renwick will be back ^{as} shortly
after eight as he can be, and we are now adjourned.

The committee ~~adjourned~~ ^{released} at 5:56 o'clock, p.m.

APPENDICES

Committee members:

J.N. Allan

J.E. Bullbrook

I. Deans

M. Gaunt

L.C. Henderson

R.G. Hodgson

W. Hodgson

J.P. MacBeth (Chairman)

W. Newman

J.A. Renwick

G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC

James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC

Gregory Rice

G.D. Finlayson, QC

Commission architect, Ontario Hydro:

K.H. Candy

Deputy Minister of Energy:

R.M. Dillon

Vice-president, finance,
Canada Square Corp. Ltd.:

W.C. Coles

List of exhibits introduced during this session appears
on next page.

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Page</u>	<u>Description</u>
233	2438-1	Cost figures of Canada Square Corporation Ltd. re Ontario Hydro head office building.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, September 12, 1973

Evening session

2449-2475

Sep. 12/73
8.10 to 8.15 pm

LEGISLATURE OF ONTARIO
SELECT COMMITTEE — HYDRO HEADQUARTERS
The committee resumed at 8:10 o'clock, p.m.

fvk

Mr. Chairman: Ladies and gentlemen, the committee will now come to order.

Mr. Shibley: Mr. Coles, we were dealing with the July ¹⁸ meeting. Was there anything more discussed at that meeting otherwise than what is reflected in the memorandum and what you've said to this point in time?

Mr. Coles: Not that I can remember, no.

Mr. Shibley: There was a meeting of the commission the very next day, July 19. Did you, subsequent to that meeting, have a further meeting with Mr. Candy?

Mr. Coles: What time span? The next day or something?

Mr. Shibley: Yes.

Mr. Coles: No, I don't think I did, no.

Mr. Shibley: Just so as to make the record clear, I take it that you, personally, did not involve yourself in meetings with Candy or anyone on behalf of Hydro until July 18, 1972?

Mr. Coles: That's right.

Mr. Shibley: I want to deal with you on the question of a provincial guarantee. Was Canada Square representing to Ames that a provincial guarantee would be part of this transaction?

Mr. Coles: I think we probably were. If I can explain what my thoughts on the matter were.

Mr. Shibley: Surely.

Mr. ~~Coles~~ Coles: I think we felt that Hydro, everyⁱtime they borrowed in Canada or in the United States, ~~they~~ always had a Province of Ontario guarantee. I didn't realize until this hearing started that, in effect, ~~they don't even~~ ~~they don't even~~ borrow in the States they borrow through the province directly. But, in any event, that was my thought on the matter and I guess ^{we} more or less assumed that we would have the province's guarantee because I don't think anybody had really evaluated, shall we say, the credit of Hydro by itself, per se.

Mr. Shibley: Was anything said, or have you any information to the effect that there was discussion between

Sep. 12/73
8.10 to 8.15 pm
fvk

(Mr. Shibley)

anyone in Canada Square, anyone in Hydro and/or anyone in government referable to a provincial guarantee?

Mr. Coles: I don't think so, no.

Mr. Shibley: So you're saying that no one in Canada Square was in communication with anyone in government regarding a guarantee?

Mr. Coles: Not that I'm aware of, no.

Mr. Shibley: Nor with anyone in Hydro?

Mr. Coles: Other than during the negotiations there, yes.

Mr. Shibley: That's the next thing. Other than what's in the documentation by way of draft agreements, was there ever any conversation, or letter communication, or communications of any kind as between Canada Square and anyone in Hydro respecting the obtaining of a provincial guarantee?

Mr. Coles: Not that I'm aware of, no.

Mr. Shibley: Without my producing it to you, you're probably familiar with the memorandum in your file, or Mr. Moog's file, which references the Treasury Board, October 1. Can you help ~~me~~ explain that?

Mr. Coles: All ^{the} ~~the~~ scratching, yes. I wouldn't have a clue what that meant.

Mr. Shibley: Pardon?

Mr. Coles: I wouldn't have a clue what that one meant. I really wouldn't.

Mr. Shibley: In any event, you gave Ames to understand when I say "you?" I mean ~~the~~ Canada Square gave Ames to understand, ~~would~~ that be Mr. Moog ^{would be} dealing with them? Is that correct?

Mr. Coles: Probably it would be Mr. Moog, yes.

Mr. Shibley: So Mr. Moog gave Ames & Company the understanding that there would be a provincial guarantee?

Mr. Coles: I would think so, yes.

Mr. Shibley: Without there having been ~~any~~ any discussion between anyone within Canada Square and Hydro in that

Sep. 12/73
8.10 to 8.15 pm
fvk

(Mr. Shibley)

respect. Is that right?

Mr. Coles: Yes.

Mr. Shibley: And without there having been any discussion between anyone in Canada Square and government in that respect. Is that right?

Mr. Coles: Yes, as far as I know.

Mr. Shibley: When did the issue of the guarantee first evolve?

Mr. Coles: That's a good question. ^{Since} ~~When~~ it was developed over the last couple of days, that question, I've been thinking in my own mind and I can't honestly say when it did come up. It didn't seem to be a particularly major issue ~~because~~ ~~otherwise~~ or a heated discussion, shall we say, or I would have probably remembered it.

Mr. Shibley: It did become a serious issue ^{however, on} ~~around~~ October 23, did it not?

Mr. Coles: It certainly did in Mr. Bradshaw's mind, yes.

~~Mr. Shibley:~~ ~~It was H-2450 follows~~

Mr. Shibley: And why was that?

~~Mr. Coles: I gathered that he thought probably the same way that I did that.~~

(Tape H-2450 follows)

September 12, 1973
8.15 - 8.20 p.m.
M.R.

~~Mr. Coles:~~
~~And why was that?~~
Mr. Coles: Well, I gather he thought probably the same way that I did, that we automatically were going to have a provincial guarantee. And then we found out, I think it was at that particular time. Now, I'm relying on Mr. Bradshaw's notes more than my own memory that that was about the time that matter may have come up. Now, it's conceivable that it might have come up earlier and ...

Mr. Shibley: Well, was the difficulty that there was embarrassment with Ames because this representation had been made?

Mr. Coles: No, I don't think so. I think it was just, as I said, it was just something that we automatically assumed would be coming and that nobody had tested the water, shall we say, in the investment market, as to what Hydro was like by itself.

Mr. Shibley: All right. In any event, the fact that there was to be no guarantee raised a problem of the credit of Hydro standing on its own two feet, so to speak?

Mr. Coles: Yes, I think it did.

Mr. Shibley: And what steps were taken ...

Mr. Coles: At least it did in my mind. I don't know ..

Mr. Shibley: Well, did it raise a question in the minds of Ames and the Prudential?

Mr. Coles: I guess it did. I suspect it was a much more -- well, I don't know. It must have raised a question in their minds.

Mr. Shibley: And what steps were taken, to your knowledge, or information, to resolve the question of credit?

Mr. Coles: Well, I think when we found out we weren't going to get it, we went to Ames and they went to Prudential and said well, "Look, here you are. This is the same deal but it's going to be the Hydro covering the loan and not the Province of Ontario."

September 12, 1973
8.15 - 8.20 p.m.
M.R.

Mr. Shibley: Right. And did the Prudential accept that without any representations on behalf of the worth of the covenant, so to speak, of Hydro standing on its own?

Mr. Coles: Well, I think that they were probably looking at Hydro financial statements, in any event, up to that time. Just because they wanted to know what was behind the—I mean, they were actually loaning the money sort of on Hydro's ^{ability} ~~building~~ and the province's guarantee was behind it, but I think they still wanted to look at Hydro so they had, I think, from what I can recall, Mr. Johnson got a lot of information on ^{the} ~~a~~ number of generating plants and various statistics on that.

Mr. Shibley: Mr. Coles, —and I'm not imputing that this did take place—but I want to be sure to cover the territory with you: Do you have any knowledge or information that there were any representations made as between—let's leave it more broad than that—any communication made between London Life Insurance Company and the Prudential referable to the funding of the Hydro building? I'm not imputing that there was ^{by the} ~~was~~ question ^{but} ~~is~~ I want that clear.

Mr. Coles: I'd be amazed if there was. No, I would be amazed if there ^{was} ~~was~~ ^{there was} ~~absolutely~~ no connection in my mind.

Mr. Shibley: No connection. I only asked the question because there was a contact with the London Life on the 6th of November and the approval of the ~~loan~~ loan, subject to the finance committee, came through on the 8th. ^{There's no} ~~connection between the two?~~

Mr. Coles: No, I gather the 6th is the correct date. I have ^{id} ~~an~~ impression that it was somewhat earlier but I may be a little confused. I think what Mr. Houser has said was, ^{is} ~~that~~ ~~he~~ felt that if he could get the money in Canadian dollars and avoid the U.S. exchange risk, which I didn't think was a risk and I gather Hydro didn't either, although he didn't maybe communicate too well with Hydro, that he would allow us a little extra rent to compensate for the interest.

September 12, 1973
8.15 - 8.20 p.m.
M.R.

Mr. Shibley: Was it ever considered or discussed in any way that the pension funds of Ontario Hydro would be used in whole or in part to fund this project, either by way of interim financing or permanent financing?

Mr. Coles: Not that I'm aware, no.

Mr. Shibley: Were there ever any representations made to Ames, and in fairness there is a May memorandum in your material, that pension funds of ~~Ontario~~ Ontario Hydro would be used or might be used to fund the financing of this building?

Mr. Coles: I don't know whether that says Ontario Hydro's pension fund.

Mr. Shibley: It doesn't say that.

Mr. Coles: It might have been somebody else's pension fund. I think it's probably our way of suggesting to Prudential and Ames that they had better get hustling or we're going to find another source of funds.

Mr. Shibley: Yes.

Mr. Coles: We were trying to obviously button down our financing at that point.

Mr. Shibley: Yes. This was a whip you were using, so to speak, to get them off their hands to close the —

~~Mr. Coles: I had a little bit of leverage here you might say.~~

Sept. 12/73
8:20-8:25 pm
PLG~~(Mr. Shibley)~~

~~a whip you were using so to speak, to get them off their hands to close the...~~

Mr. Coles: A little bit of leverage, you might say.

Mr. Shibley: Well, all right.

Mr. Finlayson: I'm not ~~sur~~ too sure *is the appropriate word* ~~it was~~ a whip.

Mr. Shibley: ~~it was~~.

Mr. Finlayson: ~~under the circumstances.~~ If they thought it was that, okay.

Mr. Shibley: A prod. Let's put it that way. A prod.

Mr. Coles: Yes sir, I would say that is true.

Mr. Shibley: Is that right?

Mr. Coles: Yes.

Mr. Shibley: Now then, when ~~the~~ that prod was being used.

Mr. Chairman: I thought he said lip.

Mr. Shibley: When that prod was being used, were you aware that Hydro had examined into the use of its pension monies and concluded that it should not use them, or could not use them?

Mr. Coles: No, I had no idea until I came to this hearing that they couldn't use the pension funds.

Mr. Shibley: You don't know where Mr. Moog got the idea to reference pension monies?

Mr. Coles: Well, I think over the period of time we have always thought that pension funds are quite ~~not~~ often a good source of borrowing money, ~~and~~ I am not really sure Mr. Shibley that Mr. Moog was referring to the Hydro's pension fund. It may well have been anybody else's. You know, there are quite a number of large pension funds around which do represent pockets of money.

Mr. Shibley: You heard me examine Mr. Moog, as well as Mr. Candy respecting the April 10 ~~mem~~ memorandum, which is Exhibit 67, and the similarity of information that appears in the appendix B, you know, "Geographical scatter," and also you

Sept. 12/73
8:20-8:25 pm
PLG

(Mr. Shibley)

have heard me mention or examine them as to Mr. Bradshaw's memorandum of March 27th or 28. Have you any knowledge or information as to how the identity or similarity of information that exists in the memo ~~and~~ of Mr. Bradshaw, the handwritten notes of Mr. Moog, and the April 10 memorandum might have evolved?

Mr. Coles: I have no idea.

Mr. Shibley: None at all?

Mr. Coles: No.

Mr. Shibley: You don't know whether that draft of that memorandum was shown to Mr. Moog?

Mr. Coles: Mr?

Mr. Shibley: Moog by Mr. Candy.

Mr. Coles: Oh, this one?

Mr. Shibley: Yes.

Mr. Coles: No, I would say not.

Mr. Shibley: Had you ever seen that memorandum of April 10, prior to its production as an exhibit?

Mr. Coles: No, I had not, no.

Mr. Shibley: There has been reference made to patents that are owned by Canada Square, Mr. Chairman, and Mr. Finlayson has been good enough to produce the patents in question, and I ask that ~~we~~ I haven't got them for distribution, but perhaps we can have them made the next exhibit as one exhibit.

Mr. Chairman: Exhibit 234.

Mr. Shibley: I don't know, Mr. Coles, if you are qualified to comment on this document in any way.

Mr. Coles: Well, I think there have been a few other witnesses who haven't been qualified and commented on things too, so

Mr. Shibley: Would you like to volunteer comment respecting that?

Mr. Genest: What documents are these, Mr. Shibley?

Mr. Shibley: These are photocopies of the patent that

Sept. 12/73
8:20-8:25 pm
PLG

(Mr. Shibley)

Mr. Moog was referring to.

Mr. Coles: Well, I think this is the way that we can develop the air conditioning outlets in the wall of the building, so that the tenant doesn't lose any useable space. With all due respect to Mr. Tamblyn, last night, there is just no way in my opinion that anybody can do the same thing as we are doing, and what Mr. Tamblyn has been trying to do is to circumvent it, shall we say, but he just can't do the same thing.

Mr. Shibley: We are very lucky we have a chairman that understands something about patents and.

Mr. Chairman: No, I don't at all. I don't understand any patents but I was interested to know what firm in Ontario or Canada arranged these patents for you. Do you ~~xxx~~ know that?

Mr. Coles: I think it was Dennis^m and Associates.

Mr. Chairman: Well, all right. That is what I was concerned with. My partner, law partner, Douglas S. Johnson, is the sole owner of H.J.S. Dennis^m and Associates.

Mr. Coles: I think probably that is true, ~~XXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~

Conflict of interest!
Mr. ~~Chairman~~ Shibley: ^A We have got to start all over!

Mr. Chairman: I have ^A no financial interest in the Dennison firm at all, but I understood, he told me he had done some work for you years ago, or for Mr. Moog. I don't think he is doing anything at the present time.

Mr. Coles: No, he isn't.

Mr. Chairman: ^A but when you talked about patents, I didn't know whether they were going to come forward ~~xx~~ or not and I was looking for names on them. There are no names on them, But no I am not a patent agent, but I want the record clear.

Mr. Coles: That was ~~certainly~~ *along*

Tape H 2452 follows

September 12, 1973
8.25 - 8.30 p.m.
M.R.

~~Mr. Coles: I'm not a patent agent but I want the record~~
~~clear on this.~~
~~whether they were going to come forward or not and I'm~~
~~looking for names on them. There are no names on them.~~
~~but - no I'm not a patent agent but I want the record~~
~~clear on this.~~

Mr. Coles: That was certainly long before you were in the Legislature, Mr. MacBeth.

Mr. Shibley: I've already asked you

Mr. Bullbrook: You'll be the next witness, Mr. Chairman.

Mr. Shibley: I've already asked you, Mr. Coles, whether you've computed your profits under any heading respecting this transaction, and you've said no.

Mr. Coles: Well, if you are talking about a 30-year projection, I would say no, I haven't, but I've maybe done one for the first year or something like that.

Mr. Shibley: That wouldn't really help very much, would it?

Mr. Coles: Well, it gives us an idea of where we are going in the first year. You know, there are so many variables in this thing with the commercial space and everything else, I would suspect that with all the evidence that's been floating around that we are not going to make very much money on that commercial area and as a result if we overshoot the mark in cost, which looks as though we are going to, I'd think it's not a very - well, it's not a very profitable situation. Let's put it that way.

Mr. Shibley: You haven't done an overall study however?

Mr. Coles: No, I don't - I can't get excited on an overall study very much, Mr. Shibley. The one variable, I suppose, which you've been discussing up to now is the tax problems and I frankly just never bothered looking ahead 30 years. I can't predict how the government is going to react 10 years down the road. So

September 12, 1973
8.25 - 8.30 p.m.
M.R.

Mr. Shibley: About Canada Square as an entity, is it correct that the only asset other than the building cranes or some construction equipment that Canada Square will own when this project is completed is this building, as per the Ames ~~per~~

Mr. Coles: That's correct.

Mr. Shibley: And at the time of the entering into of the transaction with Hydro, it really had no assets other than some construction equipment?

Mr. Coles: That's basically true.

Mr. Shibley: Yes. It was a construction company, as such?

Mr. Coles: It was, yes.

Mr. Shibley: Now, I want to carry forward with the one problem that seems to dominate the negotiations and the one problem that continues into the wording of the contract. You've mentioned what you know of the ~~May~~^{July} 18 meeting where you asked for some elbow room. What was the - would you chronologically take us through the sequence of discussions referable to the evolving of the - what turned out to be the wording of the contract "appraised value"?

Mr. Coles: I think it was - we discussed on July 18 the elbow room situation and then we presented this particular document of August 24th and Mr. McCallum shot us down pretty quickly on that one.

Mr. Shibley: Right.

Mr. Coles: And then I guess we really explained to him what our concern was and what our problems were, ~~and~~ ~~from~~ then on we just tried to hammer something out that was agreeable to everybody, ~~and~~ I can't remember in detail, I don't know how many particular drafts - obviously we were trying for as much elbow room as we could get and Hydro was trying to cut us down by as much as they could. That's the result of the final agreement that was signed. I can't really give you any specific details on that.

September 12, 1973
8.25 - 8.30 p.m.
M.R.

Mr. Shibley: That became the subject of some very hardnosed negotiations, I gather, from earlier testimony. Is that correct?

Mr. Coles: I would say that was true- yes, it was one of the major items.

Mr. Shibley: And those negotiations actually continued into November of 1972, did they not?

Mr. Coles: Well, I don't know whether you'd say they continued into November of 1972.

Mr. Shibley: Have you yet come up with the chronology of execution and delivery of these documents?

Mr. Coles: Well, I can give you a broad run-through on the thing, Mr. Shibley. ~~W~~ As I recall it, we had a number of drafts of that particular agreement. I think we had a blue book and a green-covered ~~g~~ book and maybe even a purple-coloured book ~~and~~ and I said to the lawyers, I said, "Next one you do, you put a red cover on it, because that's it. That's the end," ~~and~~ which they did. Well, that didn't stop it, of course.

H- 2453 to follow

Sep. 12/73
8.30 to 8.35 pm
fvk

(Mr. Coles)

~~that's it, that's the end, which they did. That didn't~~
~~it, of course.~~ After that ~~we~~ we continued to substitute
pages, but I would say anytime after that July 18 draft, ~~that~~
it might have been reviewed later, say, on July 22 or something,
I'm not sure. We thrashed it all out and at that point we
substituted a few pages. Then I think maybe they had some second
thoughts and they wanted to change a few more things. I think
they had another meeting before the commission, or something, and
they would like to chop another few areas from underneath us, so
we were prepared, I would say, at anytime after ~~the~~ July 18, say
October 20, ~~August 20~~ to sign that agreement. I guess we did sign the
agreement and I think several of those letter agreements were
redrafted several times and I think we probably signed them
several times and each time we signed them Hydro ~~wasn't~~ ^{had} taken
away another few goodies of ours, but the bulk of the thing was
signed ~~in~~ my recollection is it was November 1 as far as the main
agreement goes. As far as the letter agreements go, we would
sign those things and those were all things that we were giving
away so I didn't really care, or even take note of ~~that~~ ^{the} Hydro had
signed them. They weren't doing us any ~~and~~ good.

Mr. Shibley: Mr. Coles, your counsel has provided me
with the particulars respecting the political donations made by
Canada Square that I asked for and I want to put the evidence in
through you. On October 18, 1971, there was a contribution of
\$10,000. On January 25, 1972, a contribution of \$10,000, and on
August 17, 1972, a contribution of \$15,000 for the total of \$35,000.
~~and~~ I take it that the pledge of \$35,000 therefore was paid in
three installments -

Mr. Coles: That's right.

Mr. Shibley: - as indicated by those payments on
those dates. Is that correct?

Mr. Coles: That's correct.

Mr. Shibley: So as to be clear, I had thought that
Mr. Moog said there were only two payments but this has broken

Sep. 12/73
8.30 to 8.35 pm
fvk

(Mr. Shibley)

out into three. The ~~whole~~ whole of the three payments relate to one pledge made in the fall of 1971 referable to the election.

Mr. Coles: That's my understanding, yes.

Mr. Bullbrook: I am very interested in this, if you would. Has there been recorded evidence of those dates before?

Mr. Shibley: No.

Mr. Bullbrook: Would you give them to me again, please?

Mr. Shibley: Yes. October 18, 1971 - \$10,000; January 25, 1972 - \$10,000; August 17, 1972 - \$15,000, for the total of \$35,000 and the witness has said that all three payments are really instalments of one pledge of \$35,000 made in connection with the election of 1971.

Mr. Bullbrook: I understood the ~~witness~~ witness' response to be: "To the best of my knowledge", or something of that nature. I don't want you ~~to~~ drop your page thinking that I'm going to get into a harangue. I'm very interested from Canada Square's point of view that we understand this. My recollection of the evidence of the other donations was that they were substantially given concurrent with the election itself.

Mr. Genest: No, there was one more *that was given in installments*.

Mr. Bullbrook: They were given, at least, in two stages, but the majority were given concurrently with the election.

Mr. Genest: I think Zwig's was given in installments.

Mr. Shibley: Yes, that's right. Mr. Zwig gave two *if* installments also, Horizon did. Everything on the installment plan, *these days*.

Mr. Bullbrook: I thought I just said, maybe I'm not expressing myself well, I thought I said that all donations were given in more than one installment.

Mr. Shibley: No, again that's not so because Y&R's don't appear that way.

Mr. Bullbrook: I see.

Mr. W. Hodgson: Mr. Chairman, ~~what is to~~ I don't know whether Mr. Bullbrook was here when another Liberal member

Sept. 12/73
8:35-8:40 pm
PLG

(Mr. W. Hodgson)

~~the committee~~ ~~as~~ ~~wanted~~ to know who collected these ~~donations~~ ^{donations}

I was figuring that maybe they wanted to hire him for the next election, but there was no information given out at that time. I don't know whether Mr. Bullbrook would like that information or not.

Mr. Bullbrook: No, I don't anticipate. I don't intend to get into a great partisan involvement on this. I just wanted to ~~make~~ ^{have} the record clear. I think that our counsel has been going over many matters for this particular ~~season~~

Mr. W. Hodgson: I can assure you we have no ~~intention~~ notion of giving them up, Jimmy.

Mr. Bullbrook: To get the record straight, ~~the response~~ Mr. Chairman, I just want to understand Mr. Coles' response. I want to know whether he had any involvement directly in connection with the donations. That's all. I understood Mr. Coles that your response was ~~such~~ "to the best of my knowledge" or something of that nature.

Mr. Coles: I think I said, "I understand."

Mr. Bullbrook: "I understand." Right. I take it from that then that you weren't personally privy to this.

Mr. Coles: No, I was not.

Mr. Bullbrook: That's all I wanted really.

Mr. Shibley: I just want to check one thing ~~by~~ while I am waiting. Mr. Coles, have you any knowledge or information as to any influence, intercession, effort of any kind ~~made~~ by anyone in government on behalf of Canada Square, which brought about in any way assistance in Canada Square obtaining this contract from Ontario Hydro?

Mr. Coles: No sir.

Mr. Shibley: And have you any knowledge or information that anyone within Hydro or within government received any benefit from Canada Square or anyone acting on its behalf, referable to the letting of this contract by Ontario Hydro to Canada Square?

Sept. 12/73
8:35-8:40 pm
PLG

Mr. Coles: No sir.

Mr. Shibley: I just wanted to check against the original list. There was a total of \$25,000 in 1972 and those are the breakout figures for the two

Mr. Coles: Those are the breakouts, yes.

Mr. Shibley: Did you participate in any of the meetings with Hanscomb Roy?

Mr. Coles: No, I did not.

Mr. Shibley: You did not?

Mr. Coles: No.

Mr. Shibley: I have no further questions.

Mr. Chairman: Mr. Shibley, I am not sure if we have established the final date of the documents, when they were signed, sealed and delivered, all three steps. You said it was a date on the red copy.

Mr. Shibley: Mr. Chairman, I understood that counsel were going to put their heads together and give us a written summary of that that we would accept at face value.

Mr. Genest: My junior here. No such creature

Mr. Shibley: And as long as we have that before we take off to write our report, I suppose we don't have to worry about it.

Mr. Chairman: I don't know whether it is relative or not, but I gather that Mr. Coles

Mr. Coles: It is pretty difficult I would think, to try and tie it all down. I talked to Don Steadman and he just doesn't have it.

Mr. Genest: The date of the signature of Canada Square is going to be the difficulty. I thought that we were covered by the affidavit of Mr. Passon. We are not are we Mr. Shibley?

Mr. Shibley: Well, here I am drawing on my memory again, but there was a memorandum in the second half of November, which references the letter agreement regarding the wording of the \$34.

Sept. 12/73
8:35-8:40 pm
PLG

Mr. Genest: I have been trying to find a date.

Mr. Shibley: It is very late. November 23 is the best of my recollection, but what is bothering me ~~is~~

Mr. Genest: ^{we are} trying to establish an effective ~~a~~ date.

Mr. Shibley: ~~Mr.~~ Somebody is writing a letter saying, 'what about it', and it may be as late as November 25, and that is what is worrying me about it, that there is memoranda as though ~~that~~ that document, which is a fairly vital part of the overall agreement, was not executed and ~~delivered~~ delivered until some time in November. Now, I could be wrong~~x~~. I know that I am not wrong as to the memorandum ~~is~~

Mr. Genest: I know the one you mean but there are two different interpretations ~~can~~ ^{we} can put on them.

Mr. Shibley: Well, that is the only thing that is worrying me, that I am misreading it.

Mr. Genest: Well I will check that out personally.

Mr. Shibley: Okay.

Mr. Coles: I know we were still trying to come up with a final algebraic formula, which I...

Mr. Shibley: That is not what I am thinking of. I am thinking about the agreement respecting the \$34 appraised value, which is a very key document. ~~uh~~

Tape H 2455 follows

September 12, 1973

8.40 - 8.45 p.m.

M.R.

(Mr. Shibley)

~~...that's not what I'm thinking about. I'm thinking about the agreement respecting the \$34 appraised value, which was a very key document~~

Mr. Coles: Well, I'm almost positive it was signed by us before we signed the — well, ^{it was} signed contemporaneously with the contract.

Mr. Chairman: Then I had one other question. In regard to the history of transferring equity for \$1.00 in the Metropolitan Toronto area. I gather that your Canada Square was one of the first companies that adopted that here. Have you any knowledge or comment on that?

Mr. Coles: I think that is probably true. I don't think that anybody has ever gone that far down the road. I mean, there are, as Mr. Tatham testified, there are agreements made that you can transfer at the end of 5, 10, 15, 20 years, but the price is a fixed price ^{depending} ~~if anything~~ upon a number of factors.

Obviously it changes between five and ten years and 15 years and so forth, but I don't know really of anybody doing it for \$1.00, no.

Mr. Chairman: Any other members of the ^{the} counsel or committee? Mr. Hodgson?

Mr. R.G. Hodgson: Do you have any knowledge of why the ~~different~~ ^{or} really the changes in the solicitors? I mean, there seem to be a lot on both sides, why they, — for instance, Mr. Houser and Mr. McCallum seem to share and one took part for part of the time and then Mr. Bradshaw and Mr. Steadman — there seemed to be a lot of shuffling around of solicitors. Would you know any reasons for that?

Mr. Coles: I think when Mr. Houser was doing the majority of the drafting and that was the one we had most of the contact with and, as Mr. McCallum said, he came in periodically to do the heavy work, and as far as ours are concerned, Mr. Bradshaw did a lot of the original drafting and then he got tied

September 12, 1973
8.40 - 8.45 p.m.
M.R.

(Mr. Coles)

up, I believe, on another financing or something and he left it for Mr. Steadman to complete. Although he did oversee it, I think.

Mr. R.G. ~~Watts~~ Hodgson: Were you here when Mr. McCallum or Mr. Houser mentioned that it was their custom to ~~one~~ one to ~~be~~ be the easy guy and one to be the tough, and how did you find the two of them?

Mr. Coles: They were both tough.

Mr. Chairman: Which one is the easy negotiator in your firm and which one is the tough one?

Mr. Coles: I think we are all tough too, I hope.

Mr. Shibley: I'd like to ask a question on that.

In respect of changes regarding the building, your firm employs Mr. ~~Mc~~Cooper. Is that right?

Mr. Coles: Yes.

Mr. Shibley: And is - are requests for changes the subject of decision making on his part?

Mr. Coles: I'm not sure I understand your question.

Mr. Shibley: Well, let's say Mr. Candy wants a change made or an addition to this building - he takes it up with Mr. Cooper?

Mr. Coles: I would doubt it.

Mr. Shibley: I see. Why do you doubt it?

Mr. Coles: I think he would take it up with Mr. Moog, probably. Mr. Cooper doesn't have any say as far as these documents go. The representatives are either Mr. Moog or myself, I believe.

Mr. Shibley: All right. Fine. So it's really Mr. Moog that Mr. Candy is going to have to deal with respecting changes in this building?

Mr. Coles: I would think of any consequence. Now, obviously he's not going to get involved in minor changes.

September 12, 1973
8.40 - 8.45 p.m.
M.R.

Mr. Shibley: I understand. I'm talking of consequential changes.

Mr. Coles: Yes, I would think that is probably the case or myself.

Mr. Chairman: Any other questions?
Well, Mr. Coles, thank you very much. You've given your evidence in a straightforward manner and I appreciate it.

Mr. Coles: Thank you.

Mr. Chairman: Mr. Douglas Gordon. Welcome.

Mr. Gordon: Thank you.

Mr. Chairman: We've seen your face many times. We missed you for a little while and we know you've been trying to run the Hydro at the same time as keeping an eye on what we are doing here. ~~Thank you.~~

DOUGLAS J. GORDON, sworn.

Mr. Shibley: Mr. Gordon, you are general manager of Hydro?

Mr. Gordon: That's right.

Mr. Shibley: And in that position your responsibilities cut across the full spectrum of the activities of Hydro. Is that not so?

Mr. Gordon: That's correct.

~~Mr. Shibley: And ...~~

September 12, 1973
8:05 - 8:50 p.m.
D.L.

(Mr. Shibley)

~~_____~~

~~_____~~

~~_____~~

Mr. Shibley: And relative to the development ~~of~~ of a head office building this would be only one matter among a large number of matters for which you have responsibility.

Mr. Gordon: Yes.

Mr. Shibley: And do I take it that it was a subject that you would have delegated to Mr. Sissons, Mr. Candy, Mr. Dean and others to attend to rather than to have any immediate and direct responsibility in that regard?

Mr. Gordon: Yes, they would certainly carry the main responsibility but they would be touching base with me.

Mr. Shibley: And when I say your responsibilities cut across the full spectrum of Hydro's activities, does that include such things as the development of its ~~power~~ power projects, atomic plants, etc.?

Mr. Gordon: Oh, yes.

Mr. Shibley: I only mention that, because I couldn't help myself but note that there ~~were~~ were only limited occasions on which you were a participant respecting decisions taken on head office building. Is that correct?

Mr. Gordon: That's correct but, of course, in that field you also have a chief engineer, Mr. H. A. Smith, that carries the ^{ice} main ball, to ~~go~~.

Mr. Shibley: Right, all right. Now, on the other hand, you were in attendance at some fairly crucial or vital meetings with respect to the head office building. Is that so?

Mr. Gordon: Yes.

September 12, 1973
8:45 - 8:50 p.m.
D.L.

Mr. Shibley: Before we get to those meetings I want to take you back to the summer of 1971. I'm not sure how much of the evidence you've heard or are familiar with, but I ~~a~~ suspect that you are familiar with the circumstances that on June 11 Mr. Candy met with Mr. Moog who told him he was anticipating a trip to Europe with the Premier and would act as an advisor^e. You're probably familiar with the evidence that a trip was in fact made in August of that year. There is evidence that in the latter part of August, on August 25th, there was a meeting between Mr. Moog and Mr. Candy, and on August 25th certain memoranda issued out of Mr. Dean's office. Now, I'm in a very summary way giving you some background. What I really want to know in a very direct and immediate way is did you during the summer of 1971 receive ~~and~~ any information from any source whatsoever that the Premier and Mr. Moog of Canada Square were friends?

Mr. Gordon: Well, I would think the only indication that I would have at that time, I'm sure I saw that memorandum of Ken Candy's in which mention was made of the financing, but other than that, no, I had no knowledge of any friendship.

Mr. Shibley: Now then when you say that memorandum, are you talking about the one of June 11th ~~and~~²³ June 13? So that this was something known to you. Was it similarly known to others within Hydro, such as Mr. Dean?

Mr. Gordon: It may have been, I really don't know. I~~h~~ would have received this information from discussion with Mr. Sissons.

Mr. Shibley: I see. So that ~~in~~ it was a matter of common information among people such as yourself, Mr. Candy, Mr. Sissons that there was a relationship, a friendship between

H 2456-3

September 12, 1973
8:45 - 8:50 p.m.
D.L.

(Mr. Shibley)

the Premier and Mr. Moog, as early as the summer of 1971.

Mr. Gordon: Well, we would just have that reference in that memorandum.

Mr. Shibley: Well, then in late August of 71 and I'm thinking now of post-August 13, say, the latter part of August, was there any renewal of comment within Hydro that Mr. Moog had been on a trip to Europe with the Premier?

Mr. Gordon: None whatsoever.

Mr. Shibley: Did you at any time, other than the June 11 memorandum, see or hear or receive any form of communication referable to the relationship between the ~~the~~ Premier and Mr. Moog?

Mr. Gordon: No, I hadn't.

~~Mr. Shibley: Was there in the course of any discussion referred to the letter of the Hydro head office contract....~~

September 12, 1973
8.50 - 8.55 p.m.
M.R.

{Mr. Shibley}: ~~↖~~

— Did you, in the course of any discussion, referable to the letting of the Hydro head office contract, either as an observer or a participant, note whether there was any oral or written indication of that relationship when the head office building was under discussion?

Mr. Gordon: No. I made no such comment at all.

Mr. Shibley: Did you hear anybody else made any such comment?

Mr. Gordon: No, I did not, sir.

Mr. Shibley: And does that extend not only to meetings as among the staff at Hydro, including managers and so on, as well as any commission meeting ~~sl~~ you attended?

Mr. Gordon: That's correct.

Mr. Shibley: So to the best of your knowledge and information, the subject of the ~~friendship~~ ^{relationship} that existed between the Premier and Mr. Moog formed no part of any discussion among any people within Hydro nor at any commission meeting that you attended? Is that correct?

Mr. Gordon: To the best of my knowledge, that is correct, yes.

Mr. Shibley: Have you any knowledge or information that in 1972 there were any such communications? Or does your answer encompass the whole period of time?

Mr. Gordon: It encompasses the whole thing until it became public knowledge.

Mr. Shibley: All right. Thank you very much. Now then, there is in evidence, as you are probably familiar with, the memoranda of November, 1971, and frankly, Mr. Gordon, because I'm almost fearful of putting it in question form, I'd like your comments on what were the intentions of your people in Hydro as at the time of the preparation of the November 22 and November 25 memoranda which are in exhibit. You know the ones we have gone over almost ad nauseum ^a.

Mr. Gordon: Twenty-five and twenty-six?

September 12, 1973

8.50 - 8.55 p.m.

M.R.

Mr. Shibley: Yes. 25 and 26. It's like the book where the best stories are.

Mr. Gordon: Well, of course, the November 25th or the November 2nd rather, memorandum from Mr. Sissons to myself was a summation of the studies that had been undertaken by the finance branch in considerations ~~the~~ ^{by} Candy ~~at~~ for the planning of a new building and ending up really with the recommendation for a lease-purchase arrangement, ^{and at} ~~at~~ the same time, going out and obtaining proposals from a limited number of competent ~~development~~ developers.

During the period in November this was — Mr. Sissons referred to our concerns about scrapping the plans for the old building, and this was certainly a concern of mine as well as others, and this was one of the subjects that was discussed at the General Manager's Committee meeting of November 22nd.

I think that that — the minute of that meeting, though, perhaps is a little bit confusing because — or at least there hasn't been much discussion of the last paragraph in that where we were saying that we wanted to make a clear statement of the alternatives that were open, and whereas much of the minute pertains to the one competent — dealing with one competent developer and so on, there were really about five alternatives that were still in the air, as it were, at that particular stage.

Mr. Shibley: Yes, I see your point, when I look at it. You are quite right. There has not been too much attention directed to that last paragraph.

Mr. Genest: I tried.

Mr. Chairman: It just shows how ineffective you are, Mr. Genest.

Mr. Shibley: I see that it says the general manager requested that a clear statement of the alternatives open to the commission be prepared?

Mr. Gordon: Yes. We were really looking at, ~~the~~ as one alternative, the proposal that was in Mr. Sissons'

H-2457 -3

September 12, 1973
8.50 - 8.55 p.m.
M.R.

(Mr. Gordon)

memorandum of November 2nd. There was the question of using the old plans and one developer is mentioned in this memorandum. ~~There was at that time, the E-100 proposal which was not mentioned~~

H-2458 to follow

Sept. 12/73
3:55-4:00 pm
PLG

(Mr. Gordon)

~~November 2, 1973. The attention of Mr. Gordon was drawn to the old plans and~~
~~are developments mentioned in this memorandum. There was at~~
~~that time the Eaton proposal, which was not mentioned~~
~~because~~
of the confidentiality of the situation, and, of course, there were the
two others that were still sitting in the wings ^{that} ~~but~~ we certainly
didn't favour ~~them~~. One was financing ourselves and the other
was going ahead with another rental proposition like 77 Bloor.

Mr. Shibley: Had you by this time already had
representations made to you by Y and R respecting the Eaton
~~Centre~~ Park Centre development?

Mr. Gordon: Yes. They had been in, I believe, about
June 13 or 14th. Contacts had been made by Mr. Sissons on that.

Mr. Shibley: Was serious consideration given —

Mr. Gordon: November, ~~I think~~ rather.

Mr. Shibley: Was serious consideration given to the
~~locating~~ of your building at that site in ~~lieu~~ lieu of the site
you owned at University and College?

Mr. Gordon: Well, there was certainly some thought
given to it. It appealed to some people, but after considering
it, they really felt that the University-College site was the one
we should go ahead with.

Mr. Shibley: And in that connection, Mr. Gordon, I think
it is of interest to some of the committee, that the proposal of
Y and R for the Park Centre site was one ~~where~~ where in a rate of
\$4.00 was quoted for a million square feet, and the \$4 included
the land, which was represented as having a value of ~~\$4.00~~
^{\$4} ~~four~~ million, ~~approximately~~. Is that an accurate summary?

Mr. Gordon: Yes, I believe that is right.

Mr. Shibley: Now then, as compared with any of the
proposals referable to the development of a building on the
University Avenue site, why did the Commission reject the Y and R
proposal for the Park Centre site? *I will just tell you that it —*

Mr. Gordon: Well, as I recall, it wasn't all that firm
to start with as far as the development of the site went and so

Sept. 12/73
8:55-9:00 pm
PLG

(Mr. Gordon)

on, and

Mr. Shibley: Well they made it firm ^{though} subsequently, I think, in December or January. It became quite a firm submission, and I just mention it because, \$4 is a materially lower rental and as I say, it included the land. I am wondering what it was that motivated the Commission in not looking harder at that proposal.

Mr. Gordon: Oh, I think we felt that the other site was a better site for us, Mr. Shibley, and also we did have other buildings over there, the Engineering building and so on, and we had at that time moved the computers into the computer building. I think we had a vested interest in that ~~same~~ site that we felt we should develop it.

Mr. Shibley: So that you had other facilities already established in nearby buildings, and they were major facilities, such as the computer centre, as you indicated. You wanted to keep your people integrated.

Mr. Gordon: Yes, and the major parking facility over there, too.

Mr. Shibley: Yes, all right.

Mr. R.G. Hodgson: Might I ask a question about the parking? Mr. Gordon, has there been any special provision for parking for the commercial area at Hydro cost?

Mr. Gordon: Well I think our facilities, our parking facilities, will probably take care of it, or we could increase those in the property over on Murray Street. Right in the building I don't believe there has been provision for major parking facilities.

Mr. R.G. Hodgson: If that additional parking was made, would it be at Hydro cost?

Mr. Gordon: It would be, but it would be rented out.

Mr. R.G. Hodgson: But there hasn't been up to date?

Mr. Gordon: No.

Mr. Shibley: Now Mr. Gordon, you were at the Commission meeting of July 19, I believe, when the ~~last~~ decision was taken to approve of entering into negotiations with Canada Square?

Sept. 12/73
8:55-9:00 pm
PLG

Mr. Gordon: Yes, sir.

Mr. Shibley: And at that particular meeting, did Mr. Candy outline the basic terms as to what he expected to be the contract with Canada Square?

Mr. Gordon: Yes.

Mr. Shibley: In particular, did he discuss with the members of the Commission, the items, or elements, that were to enter into the costing of the building at \$34 per square foot?

Mr. Gordon: As I recall he did, yes.

Mr. Shibley: And in that connection, did he tell the Commission members that cost would mean actual construction cost, plus design fees, plus interim financing and nothing else?

~~Mr. Gordon: That was certainly one understanding, yes.~~

~~Mr. Shibley: And it was on that basis.~~

Tape H 2459 follows

Sep. 12/73
9.00 to 9.05 pm
fvk

~~Mr. Shibley:~~

~~... would mean actual construction costs, plus design fees, plus interior financing and making else?~~

Mr. Gordon: That was certainly our understanding, yes.

Mr. Shibley: And it was on that basis that the commission approved of the contract ^{with} ~~of~~ Canada Square?

Mr. Gordon: ~~He~~ Approved the negotiating of the contract with Canada Square.

Mr. Shibley: I think ~~it~~ it was earlier to negotiate, I forget the wording of the resolution. Maybe Mr. Genest could help me.

Mr. Genest: I think the resolution — it's the document. The resolution, I think, has been misleading you. In fact, I wish you'd ask Mr. Gordon about that, ~~because~~ what it was the commission was doing on July 19.

Mr. Shibley: What was the true intent of the commission referable to its decision on July 19?

Mr. Gordon: I think the true intent was that they were approving ^{the} ~~the~~ proposal that was submitted by Canada Square and that this was the company with which ~~would~~ ^{we} ~~be~~ negotiating ^{e a hard} ~~our~~ contract.

Mr. Shibley: So the wording, "Authority was given for a contract to be entered into ^{with} ~~by~~ Canada Square, subject to a final review of all terms, to design, finance and so forth, ["] ~~it~~ was really not an authority to contract ~~without~~ but an authority to go ahead and negotiate a contract. Is that correct?

Mr. Gordon: That's correct.

Mr. Shibley: Are you familiar with the negotiations that ensued?

Mr. Gordon: To a degree, yes.

Mr. Shibley: And in particular, are you familiar with ^{on} ~~the~~ reports ~~on~~ negotiations that were made to the members of the commission at meetings ~~on~~ October 26 and November 1. Were you at those two meetings?

Mr. Gordon: Yes, I was.

Sep. 12/73
9.00 to 9.05 pm
fvk

~~Mr.~~ Mr. Shibley: Would you please, dealing with the October 25 meeting, report to this committee, or advise this committee, as to what transpired at that meeting?

Mr. Gordon: I believe that was the meeting that Mr. Candy, and ~~participated~~ particularly Mr. McCallum, reported on their ~~final~~ and hard negotiations with Canada Square, and this was done in a great deal of detail.

Mr. Shibley: Mr. Gordon, you'll appreciate from my examination of Mr. Candy this morning, which was a step-by-step examination as to the importance of that term ~~define~~ "appraised value" as opposed to using the definition of cost as Mr. Candy intended, ~~was~~ that the subject of careful examination by members of the commission?

Mr. Gordon: In my view it was.

Mr. Shibley: And did the commission fully comprehend that the words "appraised value" were words that were really incapable of precise interpretation?

Mr. Gordon: I believe this was made clear by Mr. McCallum because it was of concern to him.

Mr. Shibley: And he cautioned the commission on that occasion, did he not, and indicated to you that it was not wording with which he was particularly satisfied?

Mr. Gordon: It wasn't the wording that he had hoped for but it was the wording that he felt ~~the~~ the best wording that he could negotiate with them and also ^a wording that we ~~we~~ could live with.

Mr. Shibley: What concerns us all, I might tell you, Mr. Gordon, and we want to know how in-depth the commission concerned itself, ~~is~~ the fact that the interpretation of that phrase will govern both the amount of money which Mr. Moog can borrow against the building and also any possible abatement of *rental*. ~~Mr. Gordon~~ I would like to understand, because Mr. McCallum, it's very clear, was very intense about the problem at the time, why it was that the commission simply failed to say: ~~that~~ "No, we're not going to enter into a contract which is so indefinite in the interpretation

(Mr. Shibley)

into the building in order to get your \$34 worth, so to speak.
Was that discussed?

Mr. Gordon: ~~EMX~~ Yes, but I think that on the other hand, Mr. Shibley, we were working on the understanding that the building that we wished to have on that corner was going to be a building worth \$34, based on Mr. Candy's estimate.

Mr. Shibley: The other part of that, of course, is that you're making that decision against the background of submissions by three other developers, two very much experienced in the field, who had made submissions that the building could be constructed at lower cost ~~and~~ and lower rental, ~~and~~ Did you not consider that the differential between \$30 and \$34 a foot, which in terms of this building represented \$5 million additional cost, did you not consider that that gave Canada Square too much elbow-room, if I may adopt a phrase, that it put Hydro again in the anomalous position of having to work to get its extra \$5 million worth into this building?

Mr. Gordon: Again, I think we wanted to make sure that we were going to have a building of the quality of \$34, as established ^{and} on the advice of Mr. Candy.

Mr. Shibley: It never occurred to the Commission I suppose to take the view that, well, even if we start with a contract with \$30 a foot, and even if we're confronted with extras, the \$5 million would cover a great many extras, taking it from the opposite point of view?

Mr. Gordon: Yes, I think we were working on the basis, though, as has been explained on a number of occasions during this hearing, that the development of this building would take place over the period of time, and that we were working with a developer

(Tape H-2461 follows)

September 12, 1973
9.10 - 9.15 p.m.
M.R.

(Mr. Gordon)

~~... of them and that we were working with a developer~~

on which, between ourselves and him, we would be able to end up with the quality of building that we wanted.

Mr. Shibley: Well, Mr. Gordon, you no doubt made a personal evaluation of the reputation and record of, say, Y and R Properties. Did you?

Mr. Gordon: I was relying pretty well on Mr. Candy on this.

Mr. Shibley: Well, in respect of Y and R, would you say that the advice that you and the commission were receiving was that they were a highly reputable, well-qualified firm to do this type of project?

Mr. Gordon: Absolutely.

Mr. Shibley: Yes. And similarly with Horizon. Did you receive similar advice as to their history of performance?

Mr. Gordon: That's ~~wasn't~~ right.

Mr. Shibley: Now, having regard for that advice, did you not consider -- I'm going to put this very directly to you -- that the submissions and the work-up material that was being presented to you and to the commissioners really strained for a premise which established Canada Square as the developer of those three, to which this contract should be allotted. I'm ~~thinking~~ thinking in particular of the pro-rating that took place to bring about calculations that made their rate more competitive. I'm thinking in terms of the fact that at that time the continuing differential of 10 cents on the Horizon bid was written off on what they called a "qualitative assessment."

Did it never occur to you, as an individual sitting in on those discussions, that there was a straining, a reaching, on the part of those who were working up the material to qualify Canada Square's proposal as the proposal which the commission should adopt?

September 12, 1973
9.10 - 9.15 p.m.
M.R.

Mr. Gordon: I don't know whether I'd call it a straining. There was certainly an enthusiasm for Canada Square. I don't think there is any question about that, built up over a period of time. But - well there were factors such as the lack of enthusiasm of Y and R for the commercial area. And also this question that was discussed this morning with Mr. Candy about the in-house capability.

Mr. Shibley: All right. But aside from those elements, Mr. Gordon, I want you to get the question immediately and without delay at this hour, aside from those elements, was there an element, other than those, that you've mentioned, which entered upon the considerations of the commission, yourself and other members of the staff at Hydro?

Mr. Gordon: No, I think those were the main elements, Sir.

Mr. Shibley: Now then, do you happen to know the reason for the delay in the publishing of the press release which was prepared on June 21, the ultimate press release not having issued until August 25th?

Mr. Gordon: Oh no, I don't, sir.

Mr. Shibley: There was a meeting of the commission, prior to which there was a meeting of commissioners which took up the complaints of Don Smith to Mr. Seguin. Did you participate in that meeting?

Mr. Gordon: Not in the meeting, prior to the commission meeting, no.

Mr. Shibley: Did you participate in any discussions referable to the letter of complaint to Mr. Seguin?

Mr. Gordon: Well there was simply the reference by Mr. Seguin at a commission meeting later, but it wasn't tied down to Mr. Smith.

Mr. Shibley: All right. During the summer months and the continuing down to the 1st of November - for that matter, continuing down to the 15th of November, 1972, was it known within Hydro - I mean generally, or to any individual within

Sept. 12/73
9:15-9:20 pm
PLG

(Mr. Shibley)

~~Mr. Shibley: I am talking about the point in time when he was raising complaints. Did you not hear of any complaint by Ellis-Don during the period I have mentioned?~~
Hydro, including yourself, that Ellis-Don were complaining about the manner in which ~~Mr~~ Hydro had let this contract?

Mr. Gordon: No sir, although, as you know from the evidence submitted by Mr. Smith, he contacted me over in Hawaii in February.

Mr. Shibley: Yes. I know about that, but at that point in time he wasn't complaining, was he?

Mr. Gordon: Not really. He was trying to find out the ~~the~~ status of the proposals.

Mr. Shibley: I am talking about from the point in time when he was raising complaints. Did you not hear of any complaint by Ellis-Don during the period I have mentioned?

Mr. Gordon: No.

Mr. Shibley: You had a meeting with Mr. Gathercole and Mr. Dillon on December 1, 1972. What was the subject of that discussion?

Mr. Gordon: I don't think I have a record of that. I suspect maybe it was Task Force Hydro.

Mr. Shibley: You also had a meeting on December 8 with Mr. Gathercole, Mr. Auld, Mr. Evans and Mr. Ireland.

Mr. Gordon: And Mr. Ireland?

Mr. Shibley: That is what I have a note of.

Mr. Gordon: Yes.

Mr. Genest: Is that from his diary, Mr. Shibley?

Mr. Shibley: I think it is from somebody else's diary.

Mr. Gordon: Well, I assure you, that wouldn't be in connection with the building.

Mr. Shibley: I am sure you have covered this in a blanket answer, but I want to specifically ask you, was the relationship between the Premier and Mr. Moog as friends, referenced in June of 1972 at any meeting of managers or of the Commission?

Mr. Gordon: I don't recall it being mentioned at all.

Sept. 12/73
9:15-9:20 pm
PLG

Mr. Shibley:

Nor in July?

Mr. Gordon: No.

Mr. Shibley: I have no further ~~more~~ questions, Mr. Chairman.

Mr. Chairman: Any members of the committee?

Mr. Genest: ~~There are~~ ^{they were covered} There are one or two topics that I thought might be useful if ~~it was heard~~ by this witness, because when I go over the record, and ~~it~~ perhaps it might be helpful to members of the committee.

Mr. Chairman: Mr. Genest, I have a note here to let you tidy up with this witness. If there is any tidying up you want...

Mr. Genest: Well yes, I just wondered. We ~~got~~ ^{had} had considerable discussion about the meeting of June 29, and the objections of Mr. Nastich and their treatment, and I wonder if Mr. Gordon could be asked to describe his recollection of those events.

Mr. Chairman: Would you like to put the questions yourself through me, Mr. Genest, but I would...

Mr. Genest: I think that is what I'd like Mr. Gordon to describe, was what happened ^{at} the meeting of June 29.

Mr. Shibley: -29, yes, let's do that.

Mr. Chairman: Well, you ~~have~~ have a clear and concise witness here. Maybe now is your time to make use of him.

Mr. Shibley: Would you like to comment on the discussions at that meeting?

Mr. Gordon: Well as you know, Mr. Nastich raised several questions, and he disappeared on holidays right after that over to England and put this down on paper, But I think the point that has perhaps been missed on it is that he ~~wasn't~~ wasn't the only one that was raising those questions or discussing those matters at the Commission meeting. The fact that it is down on paper, it has been attributed to him, but this was discussed right around the table as it were, and of course, these matters were dealt with

Sept. 12/73
9:15-9:20 pm
PLG

(Mr. Gordon)

later in the memorandum dated July 6, from John Dean to Mr. ~~the~~ Nastich. They were discussed in some detail, not particularly with that July 6, 1972 -- they were discussed at a meeting which we held with the chairman, that's Mr. Dean and myself, with the Chairman on July 18, prior to the meeting on July 19.

Mr. Shibley: Mr. Nastich sort of ~~came~~ came on the scene in the spring of 1972, did he not?

Mr. Gordon: That's right.

Mr. Shibley: And I believe I am correct in my ~~memory~~ memory that he fired off his first memorandum some time in March of that year, cautioning further investigation into the transaction. Is that not so?

Mr. Gordon: I'd have to go back on it. I am not sure.

Mr. Shibley: But what you are telling us now is that in addition to ~~I~~ I must say, Mr. Genest, ^I reserved this for Mr. ~~the~~ Nastich's examination.

Mr. Genest: Oh, I am sorry.

Mr. Shibley: ~~the~~ I wasn't intending to deal with it with Mr. Gordon. But I gather the point that you want made through Mr. Gordon ~~is that it was not Mr. Nastich alone who was~~ ~~examined~~

Tape H 2463 follows

September 12, 1973
9.20 - 9.25 p.m.
M.R.

(Mr. Shibley)

~~Another the point that you want made through Mr. Gordon~~
is that it was not Mr. Nastich alone who was exercising some caution?

Mr. Gordon: ^{No,} there were concerns by others around the table as well.

Mr. Shibley: Would you care to mention who they were?

Mr. Gordon: Well, I'd say by other commissioners. I couldn't name them, but by other commissioners, ~~by~~ by the chairman and by members of management.

Mr. Genest: And that was the starting point because, *you see* Mr. Nastich wasn't there in July and I wanted then to ask Mr. Gordon what happened to those concerns. How were they treated by the commission? What happened to John Dean's memorandum of July 6th and were the concerns raised by Mr. Nastich considered and dealt with by the commission?

Mr. Shibley: I didn't realize Mr. Nastich was absent in that period.

Mr. Genest: That's right. He left right after dictating that memorandum, of June 29.

Mr. Shibley: Thank you. I'm obliged to you now, because I was preparing to cover the whole period.

Mr. Chairman: Would you answer that?

Mr. Gordon: Well, as I mentioned, Mr. Chairman, they were - the answers, or the questions that had been raised by Mr. Nastich in that memorandum of June 29th were reviewed by Mr. Dean and covered in his memorandum of July 6th back to Mr. Nastich, a copy of which went to Mr. Sissons, ~~and~~ Mr. Dean and I discussed this matter with the chairman preliminary to the meeting of July 19th and then the items were raised again at the July 19th meeting.

Mr. Chairman: It may be because of our reviewing this in reverse, our hindsight, that makes us wonder why you didn't pay more attention to that. Have you any comment on that?

September 12, 1973
9.20 - 9.25 p.m.
N.R.

Mr. Gordon: Pay more attention to what, sir?

Mr. Chairman: To the warning or caveat that seemed to be contained in Mr. Nastich's memo. You say you dealt with it, considered it in the commission. I, for one, wonder whether you considered it seriously enough.

Now, I may be speaking from the advantage of hindsight rather than ^{from} the position you were in at the time.

Mr. Gordon: Well, I would say it was dealt with in sufficient detail, sir.

Mr. Shibley: Mr. Gordon - I'm sorry, Mr. Chairman.

Mr. Chairman: No, I'm through.

Mr. Shibley: That memorandum of Mr. Dean of July 6th contained comments such as; "Canada Square's proposal would look very different at different financing costs."; "There's no possibility of our borrowing at Canada Square's seven per cent rate in Canada."

Now, these are just my notes in my brief, but I take it from the memorandum of Mr. Dean that ^{what} ~~that~~ was impressing the commissioners and yourself at that point of time was the belief that Mr. Moog was going to be able to raise money cheaply?

Mr. Gordon: Yes, although I believe our work by that time was all based on an eight per cent interest rate.

Mr. Shibley: Well, that's what I can't understand. The memorandum, as I say, contains that reference that "there is no possibility of our borrowing at Canada Square's seven per cent rate in Canada." And ^{and} ~~and~~

Mr. Genest: What exhibit is that, Mr. Shibley?

Mr. Shibley: It's 79; perhaps it could be given to the witness.

Mr. Genest: What page?

Mr. Shibley: It's page four and it's paragraph (a), the lower half of the page. It says, ^Jjudgement (a), "that it is preferable to finance the building through a lease-purchase ... (There is no possibility of our borrowing at Canada Square's 7 per cent rate in Canada and specific mortgage arrangements

September 12, 1973
9.20 - 9.25 p.m.
M.R.

(Mr. Shibley) quoting

in our name would be complicated by our German borrowing arrangements. The difference which financing costs make to any rental rate must be recognized. The Canada Square proposal would look very different at different financing costs.)"

Now, that's Mr. Dean's memo to you of July 6th.

So, —

Mr. Gordon: Yes, I believe that that was - perhaps you'd like to discuss it with Mr. Dean later, but as I recall, he was referring back also to an earlier memorandum and some information he had provided there and I would think that that would be a reference back to that — to his ~~past~~ earlier work.

Mr. Shibley: But that's the confusion that's existed in my mind.

~~Mr. Gordon: But at this point in time I'm sure we were settled. You know, we thought we were working with an interest rate of eight per cent.~~

~~Mr. Shibley: There is a contradiction.~~

H-2464 to follow

Sep. 12/73
9.25 to 9.30 pm
fvk

(Mr. Shibley)

~~... what is the confusion that existed.~~

Mr. Gordon: At this point in time I'm sure we were settled - we thought we were working with an interest rate of 8 per cent.

Mr. Shibley: There's ~~a~~ a contradiction, I must say, in the documents and I intended to deal with it with Mr. Dean, in deference to Mr. Genest's asking me to deal with the mental thinking of the commissioners and yourself at this point in time. I took it, from this document, that as late as July 6, and, of course, on July 19 at the commission meeting, Mr. Candy's reporting that Mr. Moog then anticipated all his financing was going to be Swiss, and that seemed to sort of coincide with the idea of less expensive money, was that a prominent consideration in the thinking of the commissioners as at July 19 when they approved of the deal with Canada Square?

Mr. Gordon: Certainly, the low cost of money was a fact but, as I recall, and I can't put my hands on the piece of paper here, ~~we were~~ really working with the equivalent of an 8 per cent interest rate by that period. I think it was in the April 10 report where we indicated that there would be an 8 per cent interest.

Mr. Shibley: Mr. Gordon, I know that there is interest on the part of some members of this committee as to the liaison and sort of change ~~of~~ ⁱⁿ command that existed within Hydro, what might be called the managerial relationships within Hydro, as it affected the decisions regarding this project. Could you help the members of the committee to understand the sphere of responsibility of the various people and how there was any effort to integrate their efforts; where the decision-making authority rested and how decisions were, so to speak, processed? There is still some vagueness in the minds of many of us as to what that structure was. I would ask you to direct your mind particularly to this project. We're not really interested in the structure as it applied to a ~~new~~ power plant.

Sep. 12/73
9.25 to 9.30 pm
fvk

Mr. Gordon: The main responsibility would rest with Mr. Sissons as the assistant general manager, ~~the~~ services. I think this has been explained earlier. Mr. Candy actually reports to the engineering side of the house, but his talents are used in this area and he was, in effect, the project manager who was assigned the key responsibility in dealing with it. In processing, in the decision-making process, there ~~are~~ were certain periods where it was discussed by the general manager's committee, as we noted earlier. ~~And~~ Incidentally, this is a group that has line responsibility in various areas of the commission's operation, but also as a committee, they look at things from a corporate side as well.

The main submissions to the commissions would come up through Mr. Sissons to be signed by him. In this case, I signed the memorandum. The financial people, during this period, ~~because~~ because of the illness of Mr. Banks, ~~weren't~~ weren't tied in ~~quite~~ quite as closely at the front end as normally but, as you can see, they did have a considerable input throughout the whole study, throughout the whole project.

Mr. Bullbrook: Are you finished?

Mr. Chairman: No, I just wanted to follow that one up with a little more. It's certainly been one point that's ~~concerned~~ concerned me. It seems to me that Mr. Candy has been left with responsibility in the architectural field which I think he is quite capable of looking after, but it seems to ~~me~~ me that's it's gone beyond that. He's left with financial responsibility and financial recommendations but even unto the point of making arrangements and legal ~~recommendations~~ legal recommendations. That's why I was interested in the chain of command. I understand it was Candy, Sissons then to yourself and under Mr. Gathercole and the commission. ~~It seems to me, as I say, that Candy has been left with~~

(Tape H-2465 follows)

Sept. 12/63
9:30 - 9:35 pm
JLP

Mr. Chairman)

~~you are going to be in a position to answer the Commission and it~~

It seems to me, as I say, that Mr. Candy has been left with two many balls to juggle all at the same time and some of them that he wasn't practiced in juggling. Have you any comment to make on that?

Mr. Gordon: Well, except that there is no doubt that he carried a very considerable load here, but I would suggest that he was dealing with Mr. Sissons all the way through this piece and also dealing with their financial people.

Mr. Bullbrook: I wanted to ask some questions but I want to defer to Mr. Allan if I may.

Mr. Allan: Mr. Chairman, a number of the items that I was interested in have already been answered to Mr. Shibley. However, there were a few things that I don't seem to have the answers for. Perhaps the one I would mention first is that magic figure of \$34 per square foot for the construction of the building.

It's my understanding that that figure was arrived at with no consideration regarding the building you were constructing, but rather a projection of the cost of the earlier building which seems to me to be like comparing apples and oranges. I have listened and I have been here most of the time and I haven't heard anything that would indicate that any study really ~~had been carried out~~ had been carried out which had resulted in the figure of \$34 per square foot. But this immediately becomes a magic figure and everything is slanted or, for instance, the pro-rating and this sort of thing, toward that \$34. And I'm wondering if you're still satisfied ~~with~~ and I have very great respect for Mr. Candy, but I am wondering if you're still satisfied, as the General Manager of Hydro, that you took the care that you should have taken and got the expert advice which you should have got to arrive at a price of \$34 per square foot. You didn't consult any consultants, as far as I know, and you didn't bring the consultants in until there began to get to be a fire and then you brought them in.

Sept. 12/73
9:30 - 9:35 pm
JLP

(Mr. Allan)

~~It~~ It seems to me that I'm surprised that you could be satisfied in arriving at that \$34 per square foot. Now I'd be glad to hear what your opinion is of that.

Mr. Gordon: Well, I guess the answer, Mr. Allan, is that we have considerable faith in the ~~estimate~~ ^{judgement} of Mr. Candy on something of this nature.

Mr. Allan: Yes, but he didn't indicate in his evidence that the \$34 was arrived at from a study of the cost of the construction of the building you are now building.

Mr. Gordon: No, that's right. It was based on, as he explained this morning—

Mr. Allan: And this was a very important figure in your whole plan.

Mr. Gordon: Absolutely, absolutely. As he mentioned this morning, one of the check-points, the initial check-point I guess, was based on the estimate of the old building.

Mr. Allan: Of the old building, which to me was—

Mr. Gordon: This was an indication of quality that he was looking for.

Mr. Allan: Yes, but in an entirely different type of building.

Mr. Gordon: I think in the final analysis, well, I guess I'm satisfied that the \$34 is about the right area when you look at the quality of what's around.

Mr. Allan: When you were going to base so much on that \$34, wouldn't you have thought that you should have established that as a result of very careful studies? You know, to pick a figure out of the air, and it may be the right figure, but it seems to me that this was one of the things that has created doubt in the minds of the members of the Committee.

Mr. Gordon: Yes, I realize that.

Mr. Allan: And then there was another little matter that has never been clear in my mind. Did Hydro invite tenders at all, or proposals at all? Or did you only get proposals from persons who heard about it and came and asked if they could make proposals?

Sept. 12/73
9:35-9:40 pm
PLG

(Mr. Gordon)

Well, I guess we were approached by most of them. I think we were approached by Y and R; I think we were approached by Horizon earlier, and then a second time, and certainly by Ellis-Don. I think we were approached by Cadillac as well, rather than us contacting Cadillac, So I guess ~~that~~ the answer is we were approached by them, but we invited them to submit proposals to us.

Mr. Allan: Perhaps if you were doing it again, you might invite proposals.

Mr. Gordon: We might work the other way, yes.

Mr. Chairman: Arising out of Mr. Allan's line of questioning, we come back to this ~~new~~ original building to get our \$34 rate. Now isn't it right that the design of the original building, that is on your right and my left here, is an entirely different structural cost to build than the straight lines. ~~the~~ When I say straight, I am thinking of the rise lines, the vertical lines, as opposed to the diagonal lines on this building, that the cost of this building on your right design-wise, structurally, is a much more expensive building to build?

Mr. Allan: And proposed to have been built in two parts.

Mr. ~~Edna~~ ~~Gordon~~ Gordon: Well I would agree with you that it certainly looks that way, but I think that the proof of-- we will find out the proof of the pudding later, and I would be very much surprised if we are below the \$34 that Mr. Candy is talking about.

Mr. Allan: Well, Mr. Gordon, I won't be one to complain because you didn't use the original plans and got new ones.

Mr. Gordon: I gathered that.

Mr. Chairman: We think it was one of the wisest things-- or some of us think -- I shouldn't ^{we} tend to speak for the committee.

Mr. Allan: We like to find things we can compliment you on.

Mr. Chairman: We think ^{we}

Sept. 12/73
9:35-9:40 pm
PLG

Mr. Gordon: Maybe you want us to bring the models in.

Mr. Allan: That's one of them.

Mr. Chairman: The million or so you scrapped there was well scrapped, I think.

Mr. Allan: And then, of course, the other thing that I wanted to mention, and this has been perhaps already brought out by Mr. Shibley, and that is that those words of "appraised value" ~~are~~ It is a bit strange to think that 11 members of a committee who represent a cross-section, I suppose, of the public, could be so unanimous in their feeling that this was a very bad wording to have in a contract as important and as large as this one, and I think to some of us it is very strange that with all the expert advice you have had and the experience you have had, that you couldn't have arrived at a wording in your contract that doesn't almost suggest the first action might be a lawsuit.

Mr. Gordon: Yes, I have heard that mentioned before.

Mr. Allan: I ~~mean~~ mention that, you may not care to comment on it, but this I think seems very strange, and I think I would be expressing the opinion of all the members of the committee, that a contract of this size, to most of us is a big contract or agreement, ^{or} whatever you call it, should leave so many things in doubt. That is, is Canada Square entitled to a contractor's profit?

Mr. Genest: I don't think we dispute that, Mr. Allan.

Mr. Allan: I beg your pardon?

Mr. Genest: I don't think we dispute that. I think Mr. McCallum has said that any appraised value must include a reasonable contractor's profit.

Mr. Allan: Yes, and then do you know from your studies what the financial possibilities are for ~~the~~ Canada Square during the lifetime of the contract?

Mr. Genest: Mr. Nastich has some evidence to give on that.

Mr. Allan: Well, we'll get that from him *then*

Sep. 12/73
9.40 to 9.45 pm
fvk

(Mr. Allan)

~~... during the lifetime of the contract,~~

~~Mr. Gordon: Mr. Bastick has some evidence to give~~

~~at this~~

~~Mr. Allan: He'll get that from him then.~~ I think

that was all I had, Mr. Chairman.

Mr. Chairman: Sorry, Mr. Allan, ~~me~~ I interrupted you.

I thought you were through a few minutes ago.

Mr. Allan: Maybe you wanted me to be.

Mr. Chairman: No, no.

Mr. Bullbrook: It's obvious, Mr. Chairman, that during the tenure of his eight years as Treasurer of Ontario, the government was in good hands.

Mr. Allan: Thank you.

Mr. Bullbrook: He doesn't leave me any questions to ask.

Mr. Chairman: All right then.

Mr. Bullbrook: No, I will ask some.

Mr. Chairman: You haven't got any left but you're going to ask some anyway. Mr. Bullbrook.

Mr. Bullbrook: I want to tell you, in putting these questions to you, Mr. Gordon, I want the record to show the premise that I feel, not necessarily on the evidence that's been given here, but on information that I have that you are the senior administrative officer of an emanation of the government of Ontario recognized almost throughout the world as the leader in, for example, the development of nuclear power and energy sources. So, in asking you these questions, I want you to realize that it's in this context that I do ask you these questions. I'm very vitally interested in where the responsibility of the commission began and where the responsibility of the administration finished. This afternoon, in carrying forward this concern of mine, I interrogated Mr. Candy with some vigour in connection with exhibit 177. I don't think it need again to be produced to you. I want to ^{Synthesize} ~~since this afternoon -~~

Sep. 12/73
9.40 to 9.45 pm
fvk

of that, Mr. Mr. Genest: Could I ask that it be produced ^{in spite}

Mr. Bullbrook: Let it be produced. You'd better
produce exhibit ^{then} 2, also.

Jx Mr. Chairman: What are the two numbers?

Mr. Bullbrook: ¹⁷⁷ ~~One hundred and seven~~ and, I believe, ² ~~the~~

² is the response to the questions of the Leader of the Opposition,
the responses that were filed in the ~~the~~ Legislature.

Mr. Gordon, on exhibit 177, sir, I regard as a public
relations document developed by you/~~public~~ public relations people.
I want to say to you that I regard it, without a great deal of
substance. What is your public relations staff? How many people
do you have, sir, at Ontario Hydro in connection with public
relations?

Mr. Gordon: I think there would be about 100, in the
division, but I would have to check.

Mr. Bullbrook: About 100. I'm referring to page 1
of this document dated August 25, 1972, where the question is asked:

"Why was Canada Square Corporation selected?"

That document is one thing, Mr. Gordon, but exhibit
number ² ~~the~~ is a different thing entirely. Exhibit number ² ~~the~~ is
the
a response tabled in the Legislature of Ontario to questions asked
by the Leader of the Opposition and I want to refer you to page
four in connection with those responses, and I want to ask you
some questions as to the commission's function. You'll notice
the question:

What are the names of the other tenderers? —

Are you with me, sir? —

"and what amounts did they tender?"

Answer: "Proposals were requested from five developers."

Sir, I put it to you, proposals were ~~not~~ not requested
from five developers. On the evidence that's been given to us
here, proposals were ~~not~~ requested from five developers.

Mr. Genest: Cadillac was asked.

Mr. Bullbrook: Mr. Genest, help me! Were proposals
requested from five developers?

Mr. Genest: I think they were, Mr. Bullbrook.

Sep. 12/73
9.40 to 9.45 pm
fvk

Mr. Bullbrook: I put it to you -

Mr. Genest: You've got four who are in here, plus Cadillac, who didn't *want to submit one.*

Mr. Bullbrook: I want to say this to you, Mr. Genest, I read that, and the inference that I took from it, —

Mr. Genest: Don't get mad, Mr. Bullbrook.

Mr. Bullbrook: I'm not getting ~~and~~ angry, I'm just saying to you, in effect, this. As I read that, as a member of the Legislature, that the impulse ~~was~~ came from Hydro to these developers and, I say to you on the evidence, that isn't the evidence. The impulse came from the developers themselves to Hydro seeking out the possibility of making a proposal. I'm not going to dwell on that, but I'm very much concerned with the following answers.

On top of page five, "all were carefully analysed and discussed with each ~~and~~ developer ~~individually~~ individually."

I want to ask you, Mr. Gordon, ~~were each of these proposals analysed by the Commission and were the proposals discussed with each developer individually by the Commission?~~

(Tape H-2468 follows)

September 12, 1973
9.45 - 9.50 p.m.
M.R.

(Mr. Bullbrook)

~~Was~~ Was each of these proposals analysed by the commission?

And were the proposals discussed with each developer individually by the commission?

Mr. Gordon: Well, they were analysed in that document dated April 10th and that was the document that was reviewed with the commission along with the memorandum to the commission.

Mr. Bullbrook: Was each proposal discussed by the commission with the individual — developers individually?

Mr. Gordon: Well, it was — that I think refers, Mr. Bullbrook, to the discussions that Mr. Candy had with each developer, in outlining the specifications.

Mr. Bullbrook: I take it then that really this is the pith then of the response — that really this response to the members of the Legislature, in effect, is saying that this isn't what the commission did, ^{it's} it's what the administration of Hydro did?

Mr. Genest: That is a pretty thin distinction. Is the commission going to dig every ditch?

Mr. Bullbrook: Mr. Chairman, you had better pay attention to this because we are getting to a matter that I consider ~~unimportant~~

Mr. Genest: Mr. Bullbrook and I are going to ~~quarrel~~ quarrel. I'd say that those are questions that are invidious. ~~Mr~~

Mr. Bullbrook: Well, they might be invidious but I want to tell you ~~that~~

Mr. Genest: ^{They're} ~~very~~ argumentative.

Mr. Bullbrook: — I want to tell you that I regard the responsibility ~~a~~ in connection with this letting of the contract, not that of the senior administration of Hydro but that of the commission itself, and in answer to the Leader of the Opposition, these responses were from the commission. And if they were from the senior administration of Hydro, then the members of the Legislature should have been told that, Mr. Genest.

September 12, 1973
9.45 - 9.50 p.m.
M.R.

Mr. Genest: I just don't agree with you,
Mr. Bullbrook, *but I guess that's an argument.*

Mr. Bullbrook: Well, you don't have to agree with me. I want to go into this with Mr. Gordon and if we are going to have an argument, we're going to have an argument. I want to know - I want to know - and this is my question, Mr. Chairman, this response says all were carefully analysed. Now we know that the fact of the matter is that the response by Mr. Gordon is that they were — that the analysis was an evaluation made by Mr. Candy and other members of the administration, and that analysis, not the proposals, but that analysis, was evaluated by the commission. Isn't that right?

Mr. Gordon: That's right.

Mr. Bullbrook: That's right. Then it goes on and it says "and discussed with each developer individually," *Now*, did the commission discuss with each ~~the~~ developer individually?

Mr. Gordon: Oh no. This would be Mr. Candy.

Mr. Bullbrook: It would be Mr. Candy?

Mr. Gordon: Yes.

Mr. Bullbrook: So, in effect, this response is saying that the administration of Hydro did this, not the commission?

Mr. Gordon: The discussion with the developers?

Mr. Bullbrook: Right.

Mr. Gordon: Yes.

Mr. Bullbrook: Now, it goes on and says: "And a decision was made —"

Mr. Genest: Mr. Bullbrook, to be fair, can I —
I'm sorry.

Mr. Bullbrook: *No,* go ahead.

Mr. Genest: I think I owe this to my client.

The corporate name of Hydro is the commission — Hydro Electric Power Commission and I say to you that that can be used the same way as "the company" if you are talking about a corporate body. Now, when you talk about "the company, did this" and "the

September 12, 1973
9.45 - 9.50 p.m.
M.R.

(Mr. Genest)

company did that, it does not imply, in my respectful submission, to any ordinary human being that the Board of Directors did it all. It's a corporate responsibility and the commission itself must take the ultimate responsibility.

Mr. Bullbrook: I'm not going to ---

Mr. Genest: But I really think that ---

Mr. Bullbrook: I'm not going to take strong issue with Mr. Genest. He's doing his job and doing it quite well. It's the question of responsibility ---

Mr. Genest: That's what the Court of Appeal tells me when I lose!

Mr. Bullbrook: It's the question of responsibility that I'm getting to, sir. This is it. I want to know where the responsibility of the commission began and ended. ~~and~~ I want Mr. Genest to know, I want the public to know, I'm not taking issue with Mr. Candy or Mr. Gordon; it's obvious to us that they are ~~extremely~~ extremely valuable administrators ~~and~~ but I want to ask these questions.

I have an obligation to ask these questions. You see, Mr. Gordon, may I say to you, that the very next line, if you'll read it with me - it says, "And a decision was made to proceed to enter into an agreement with Canada Square Corporation". Now, sir, that decision wasn't made by Mr. Candy. That decision wasn't made by the senior administration of Hydro. That decision was made by the commission.

Mr. Gordon: Absolutely.

Mr. Bullbrook: Absolutely. Now when you read that together, public relations or otherwise, I want to read it together with you now. "All were carefully analysed and discussed with each developer individually and a decision was made to proceed to enter into an agreement with Canada Square Corporation."

Now the interpretation on your evidence is as follows: "All were carefully analysed by the commission and what they did in effect was analyse an analysis of the proposals made by

September 12, 1973
9.45 - 9.50 p.m.
M.R.

(Mr. Bullbrook)

Mr. Candy^A and discussed with each individual developer^A and what that means in effect was that the senior administration discussed with each developer individually^A and then it goes on and it says "and a decision was made." But that decision was made by the commission.

Mr. Gordon: Yes, that's right.

Mr. Bullbrook: You see my problem, Mr. Gordon?

I think you must see my problem.

Mr. Gordon: Well, I must confess I don't.

Mr. Bullbrook: You don't?

Mr. Gordon: No.

~~Mr. Bullbrook: Well, that sentence taken in its appropriate context says (1) the analysis that was~~

H-2469 to follow

(Mr. Bullbrook)

~~My problem is, Gordon, I think you must see my problem.~~

~~Mr. Gordon? Well, I must confess I don't.~~

~~Mr. Bullbrook, you don't?~~

~~Mr. Gordon: No.~~

Mr. Bullbrook: Well that sentence, taken in its appropriate context, says, ~~the~~ "the analysis that was supposedly made by the Commission." You'll agree with me the decision was made by the Commission, right?

Mr. Gordon: Yes.

Mr. Bullbrook: But you don't agree with me that the Commission carefully analysed, did they, the proposals?

Mr. Gordon: No, the main analysis was carried out in that report of April 10th.

Mr. Bullbrook: And the discussion wasn't done by the Commission itself; the discussion wasn't had by the Commission with each individual?

Mr. Gordon: No, that's right.

Mr. Bullbrook: I'm going to go on and read this. ~~The~~ "A decision was made to proceed to enter into an agreement with Canada Square corporation as it best met our requirements," I put it to you that "our requirements" are the requirements of the Commission.

Mr. Gordon: Or Ontario Hydro. The Company's requirements, the organization's requirements.

Mr. Bullbrook: Who is Ontario Hydro?

Mr. Genest: A body corporate.

Mr. Bordon: A body corporate, that is right.

Mr. Bullbrook: We began with Mr. Candy doing the analysis right? Now is it Mr. Candy's decision? "As it best met our requirements" — who has the responsibility of making the decision?

Mr. Gordon: The final decisions are made by the Commission.

Mr. Bullbrook: Whose requirements are they?

Mr. Gordon: The requirements of the organization of Ontario Hydro as a going organization.

Sept. 12/73
9:50 - 9:55 pm
JLP

Mr. Bullbrook: Being the requirements of the Commission. You'll agree with that.

Mr. Gordon: Being the requirements of the operation, I would say.

Mr. Bullbrook: Right, right, including the Commission.

Mr. Gordon: The whole operation.

Mr. Bullbrook: We don't exclude the Commission.

MR. Gordon: By no means.

Mr. Bullbrook: By no means, right. "And best conform to the following criteria^{ya}". Now, I have read these before and it's late in the evening, I want to ask you, were you at a meeting where Mr. Candy went over these criteria with the Commission?

Mr. Gordon: Yes, these were contained in the memorandum to the Commission as I recall.

Mr. Bullbrook: All right. Now, when he discussed in-house capability to handle the complete project, did he bring to your attention ~~that~~ that Y and R and Horizon didn't have that in-house capability? Did he bring to the attention of the Commission that they didn't?

Mr. Gordon: Yes, I believe he did.

Mr. Bullbrook: But did you ask him why he asked them for a proposal if they didn't meet the first criterion established?

Mr. Gordon: Well, you were into this this afternoon with Mr. Candy.

Mr. Bullbrook: You're in a different position, Mr. Gordon, You're the one man whom I REGARD as the complete liaison between administration and the Commission, you're the General Manager, and an extremely capable one, it's quite obvious. And I want you to help me to find out what the Commission did in connection with this contract that this Committee has been now three months doing.

For example, you say there was a discussion at a Commission meeting and in-house capability to handle the complete package was one of the criteria that was considered by the Commission?

Mr. Gordon: That's right.

Mr. Bullbrook: Did any of the Commissioners, and I take it from what you say that Mr. Candy said that the others didn't have that in-house capability?

Mr. Gordon: That's right.

Mr. Bullbrook: Did he explain that to them?

Mr. Gordon: Yes he did.

Mr. Bullbrook: What did he say to them? Can you recall?

Mr. Gordon: Well, as I recall, he explained what parts of the total package could be carried out by Y and R and Horizon, and, of course, by Canada Square.

Mr. Bullbrook: His evidence this afternoon was, Sir, that Y and R and Horizon didn't have that capability.

Mr. Gordon: That's right.

Mr. Bullbrook: Why were they asked to make a proposal if they didn't have that capability?

Mr. Gordon: Well, this was one of the factors that was included, but it didn't completely rule these people out. I really can't see your point.

Mr. Bullbrook: My point is, and I'll try to make it clear to you, that as I glean the evidence there was a predisposition to Canada Square, and that these criteria were established to the conformity of only Canada Square. If one of the criteria on which the Commission based its decision was in-house capability, and Y and R and Horizon couldn't meet that criterion, ^{EN}and Canada Square could, I think it follows as a matter of logic that Canada Square would have the advantage—don't you agree?

Mr. Gordon: Yes, but I think it's a ~~bit~~ balancing of all these criteria in reaching a final judgement or final decision, Mr. Bullbrook.

Mr. Bullbrook: All right, let's go to ^(b) ~~the~~ "Previous experience in lease-purchase arrangement and building management." ^{EN}What did he tell you with respect to that?

Mr. Gordon: In that case it was recognized that both Y and R and Horizon had that capability, previous experience.

Sept. 12/73
9:50 - 9 55 pm
JLP

MR. Bullbrook: So they met that criteria? ^{on}

Mr. Gordon: That's right.

Mr. Bullbrook: "Capability to handle a project of this complexity and scope." What did he tell the Commission, not you, Sir, I'm sorry — What did he tell the Commission with respect to that?

~~Mr. Gordon: Please may we proceed with the discussion?~~

Sept. 12/73
9:55-10:00 pm
PLG

(Mr. Bullbrook)

~~"Capability to handle a project of this complexity
and scope."~~

~~What did he tell the Commission, not you sir, I recall,~~

~~what did he tell the Commission with respect to that?~~

Mr. Gordon: There was no problem there, as I recall.

Mr. Bullbrook: I don't understand that answer.

Mr. Gordon: Well, that that they had the capability.

Mr. Bullbrook: Well, what about Y and R and Horizon?

Did they?

Mr. Gordon: ~~Let~~ to handle a project of this complexity
and scope.

Mr. Bullbrook: Who did?

Mr. ~~and~~ Gordon: They all did.

Mr. Bullbrook: They all did. All right.

"Minimum of other interests and commitments so that
full attention could be given to the carrying out of this project
as expeditiously and as efficiently as possible."

What ~~and~~ did he bring to the Commission's attention in that
~~and~~ respect?

Mr. Gordon: As I recall, ~~under~~ under that particular
item, Canada Square fulfilled that requirement better than the
others.

Mr. Bullbrook: Well, now, you say "better than the
others". Did he advise the Commission that he had brought this
requirement to the attention of the other developers?

Mr. Gordon: I don't recall sir.

Mr. Bullbrook: Do you realize from the evidence that
the evidence of Mr. Tatham and Mr. Zwig is that he didn't bring
this to their attention as one of the criteria? Are you familiar
with that?

Mr. Gordon: No.

Mr. Bullbrook: You are not familiar with it.

Mr. Gordon: I hadn't picked that out of the evidence.

Sept. 12/73
9:55-10:00 pm
PLG

(Mr. ~~Ex~~ Bullbrook)

"(E) An agreement to retain an outside consulting architect at the developer's expense to ensure the most aesthetic and efficient design for this location, keeping in mind the regional planning of the area."

What did he discuss with the Commission with respect to that?

Mr. Gordon: They had all ~~ex~~ accepted that.

Mr. Bullbrook: They had all accepted it. Now there are these additions that are not included in the public relations document being Exhibit 177. They are included in Exhibit 2:

"(F) The maintenance of a good working relationship between the parties during the life of the contract."

What ~~ex~~ did he discuss ~~ex~~ with the Commission with respect to that?

Mr. Gordon: Well, that this would be a very important ~~ex~~ item in a proposal or project of this type.

Mr. Bullbrook: Did he lead the Commission to believe that the relationship with Canada Square, based on the ~~ex~~ evaluation that he had made would ~~ex~~ be superior over that of Horizon and Y and R?

Mr. Gordon: No, I don't think he indicated that it would be superior. From information that he had obtained in talking to Canada Square, he recognized that this was again a plus factor as far as ~~ex~~ ^{Canada Square} was concerned.

Mr. Bullbrook: Can you recall whether any of the commissioners interrogated him in connection with this item ~~ex~~ about the ~~MrxxGordonxxxxMax~~ possibility?

Mr. Gordon: No. I don't recall it.

Mr. Bullbrook: Now

"(G) The provision of a commercial area to assist in carrying the building, give life to University Avenue, and provide facilities badly needed in this particular location, such as banks, restaurants and shopping facilities." ~~ex~~

What did Mr. Candy bring to their attention with respect to this?

Mr. Gordon: Well, this was an area where certainly Canada Square indicated more enthusiasm than the other developers,

Sept. 12/73
9:55-10:00 pm
PLG

(Mr. Gordon)

and this was an important factor as far as we were concerned.

Mr. Bullbrook: Were these criteria^{a/}, ~~they~~ were they established by Mr. Candy previously alone, or with whom? Who established ~~the~~ ^{ed/} ~~criteria~~ for example, criteria(G)?

Mr. Gordon: Oh, I think this would be Mr. Candy; probably Mr. Sissons was involved in it as well. It was one of the concepts that we had for the new building.

Mr. Bullbrook: Yes, what involvement did the Commission have in connection with an evaluation of what Horizon and Y and R wanted to do with respect to commercial development?

Mr. Gordon: Well, I would ~~xxx~~ have to go back — I think this was covered in the April 10 report, ~~this~~ particular point in relation to Y and R and Horizon.

Mr. Bullbrook: I want to put it to you, Mr. Gordon, if I may, that ~~of~~ these ~~criteria~~ criteria^{a/}, Criterion No. 1, In-house capability, Criteria(A), In-house capability, and Criteria(G). The development of the commercial area, were the only ~~criteria~~ criterion where Canada Square were in a superior position to the other proposers.

Mr. Gordon: Yes, I think(D) was a factor too Mr. Bullbrook.

"Minimum of other interests and commitments so that full attention can be given to carrying out this project".

Mr. Bullbrook: Well it is very difficult, — We have asked the question. I want to know whether the Commission asked the question. Do you recall whether any of the commissioners asked the question as to whether that criterion had been, or for that matter, any of the criteria^{a/} had been brought to the attention of the other developers?

Mr. Gordon: No, I do not recall.

Tab H 2471 follows

H 2471-1

September 12, 1973
10:00 - 10:05 p.m.
D.L.

~~(Mr. Bullbrook)~~

~~On that matter, the criticism had been brought to
the attention of the other developers.~~

~~Mr. Gordon: No, I do not recall~~

Mr. Bullbrook: My concern basically is that, Mr. Chairman, if I may, ~~as I mentioned~~, I suppose I've expressed it through this line of questioning, I'm very interested in what the Commission itself did with respect to analyzing the input of all the developers to the objective criteria that were established by Hydro itself. I take it from your evidence that, well, what can I take from your evidence with that respect? Was there a significant discussion of each of these proposals and an evaluation by the Commission itself?

Mr. Gordon: No, I think it was based on the memorandum to the Commission and the information contained in the report of April 10th.

Mr. Bullbrook: I put it to you, Mr. Gordon, that the decision, the basic decision in connection with the choice of Canada Square, the fundamental and proximate decision was not made by the Commission but by the senior administration of Hydro.

Mr. Gordon: It was made with the recommendation of the administration but it was certainly the Commission that made the decision, Mr. Bullbrook.

Mr. Bullbrook: Well, as general manager, I put it to you, sir, that the bulk of the evidence that has been given to us in connection with this, if I may say, so-called evaluation, pointed itself ~~back~~ towards Canada Square from the very beginning.

September 12, 1973
10:00 - 10:05 p.m.
D.L.

Mr. Genest: I'd like to have that question again,
Mr. Bullbrook. I'm having trouble hearing you back here.

Mr. Bullbrook: I put it to you that the bulk of the evidence from Hydro, the documentary evidence, was that the choice of Canada Square was pointed to from the very beginning.

Mr. Gordon: Well, I don't think that this ~~was~~^{was} the case. I think that ~~the Commission was~~ as far as the Commission was concerned, the decision was theirs and it was open to their decision right through to November ~~the~~ 1st when they signed the agreement.

Mr. Bullbrook: And ~~at~~ at any time up to the execution of the agreement, as far as you were concerned, or rather as far as the Commission was concerned, ~~there~~ there was a distinct possibility that, for example, Y and R might be chosen?

Mr. Gordon: The deal could have been wiped out.

Mr. W. Hodgson: Mr. Chairman.

Mr. Chairman: I'm not so sure Mr. Bullbrook *is through. Is* your question arising out of that last question?

Mr. W. Hodgson: Not out of the last question.

Mr. Bullbrook: Go ahead.

Mr. W. Hodgson: Are you through Mr. Bullbrook?

Mr. Bullbrook: I'm through for the moment.

Mr. W. Hodgson: Now ~~in~~ⁱⁿ farmers' language the proof of the pudding is always in the tasting, and we did have the opportunity to visit two buildings, one built by Y and R and one built by Canada Square. Though I didn't visit the Y and R building on the particular morning but ~~it~~ it is in evidence, it's a prize package of Y and R and I'm sure ~~the~~ *concern which* Mr. Bullbrook has a right to express *his concern* on how

September 12, 1973
10:00 - 10:05 p.m.
D.L.

(Mr. W. Hodgson)

the contract was let and the depth that went in to it.
But I'm sure that Mr. Candy visited the buildings built by
both developers and in my own humble opinion ~~there~~
there is as much difference in day and night as in the
quality of the two buildings, and maybe this is what Mr. Candy, ^{when}
^{he} was making his recommendation to the Commission, took into
consideration, ~~there~~ I think that someone from
Mr. Bullbrook's party should have visited those buildings
that morning and ^{seen} ~~see~~ the difference in the quality of the
two buildings.

Mr. Chairman: Well, I'm not so sure that there was
that much difference in the quality.

Mr. W. Hodgson: Well, I mean that's your opinion,
Mr. Chairman, ~~maybe~~ ^{we} ~~all~~ ^{have} ~~got~~ different ~~opinions~~ ^{opinions}.
That was my opinion.

Mr. Bullbrook: I don't want this line of questioning—

Mr. W. Hodgson: ^{I want to express it—}
~~present~~ here and have it on record.

Mr. Bullbrook: Well, I don't want this line of questioning
to exercise my colleague, Mr. William Hodgson. The purpose
of my ~~questioning~~ questioning is of course that we were given
answers in the legislature of Ontario. Mr. Gordon, that's the
very reason for these questions and the very reason for the
foundation I laid this afternoon with Mr. Candy.

(Tape H 2472 follows)

September 12, 1973
10.05 - 10.10 p.m.
M.R.

(Mr. Bullbrook)

~~... given answer to the Legislature of Ontario. Mr. Gordon, that's the very reason for these questions and the very reason for the foundation I laid this afternoon with Mr. Gordy.~~ It's one thing to issue a press release, do you follow me, sir? ~~that's~~

Mr. Gordon: Yes.

Mr. Bullbrook: It's an entirely different thing to answer questions to the members of the Legislature in response to a question from the Leader of the Opposition, because I want to tell you, sir, that's the very foundation of our parliamentary process. That's the job of the Leader of the Opposition. And when you say to him, your public relations staff or anybody else, says to him, "All were carefully analyzed, discussed with each developer individually and a decision was made", ~~and~~ a reasonable man can only come to one conclusion. Since the decision was made by the commission, ~~the~~ the commission carefully analyzed each of these proposals and ~~the~~ the commission discussed these proposals with each developer individually, and I'm going to say this to you, Mr. Gordon: If it hadn't been for this hearing that's what the record of Hansard would show to this day and that would be the interpretation that any reasonable member of the Legislature would put upon it.

Mr. W. Hodgson: And also if it ~~what~~ hadn't have been for this hearing, we wouldn't have had the Leader of the Opposition saying that he thought there was wrong-doing without any facts before him, before he started to put it on the Order Paper. We wouldn't even have been here.

Mr. Bullbrook: Mr. Chairman, it's too late in the night to get into this type of discussion. I'm trying to make my point and my point is not a partisan point. My point is that these are responses made in the course of our parliamentary process.

Mr. Genest: Mr. Bullbrook,

September 12, 1973
10.05 - 10.10 p.m.
M.R.

Mr. Bullbrook: Don't interrupt me, Mr. Genest, please. I'm not talking to you and I think it's of paramount significance that this be brought to light, that surely to goodness we must ...

Mr. Genest: Well, it is being brought to light, with great respect,

Mr. Bullbrook: Don't interrupt me, Mr. Genest ...

Mr. Genest: ~~the proper~~ ^{in an improper} use of semantics, Mr. Chairman, I'd like Mr. Bullbrook to explain what he means by "the commission." What's his understanding of that expression?

Mr. Bullbrook: Don't interrupt me, Mr. Genest.

Mr. Genest: I'll listen to the chairman.

Mr. Chairman: I think the members of the committee know what "the commission" means. Mr. Bullbrook is attempting to make a point. Mr. Hodgson has just said what he thought in regard to quality. Mr. Bullbrook is attempting to make a point of what he believes is the commission and whether the commission has considered this or not.

~~And~~ I think the line of questioning that he is going on is quite reasonable. Insofar as the conclusions he comes to, that is another matter.

Mr. W. Hodgson: Mr. Chairman, I didn't just attempt to make a point as far as line of quality is concerned. I tried to make a point that there should be facts before there is anything placed on the Order Paper. He was talking about the parliamentary system and there should be facts before you starting to put them on the Order Paper.

Mr. Bullbrook: I'm finished with my questioning. Thank you, Mr. Chairman.

Mr. Chairman: Fine, Mr. Bullbrook. Mr. Newman.

Mr. Newman: Mr. Chairman, ~~we come back~~ Mr. Gordon, coming back to the criteria, I'm sorry I'm going to have to ~~delve~~ delve into this a bit. In the first criteria ^{on 2} Mr. Bullbrook this afternoon pursued a line of questioning

September 12, 1973
10.05 - 10.10 p.m.
M.R.

(Mr. Newman)

with Mr. Candy, ^{and} with you tonight, sir, saying, ~~that~~ why were Y and R and Horizon asked to present a proposal if they didn't have the in-house capabilities? I assume, Mr. Gordon, that you didn't decide that they did not have the in-house capabilities until after their proposals were in and analyzed. Is that right?

Mr. Gordon: That's right, yes.

W. Newman: And one further question. The commission made the final decision on who ~~was~~ they would deal with, and certainly they would be guided by the recommendations of their senior staff, would they not?

Mr. Gordon: Certainly.

W. Newman: Thank you.

Mr. Chairman: Mr. Glen Hodgson.

Mr. R.G. Hodgson: Mr. Gordon, ~~the~~ the exhibit 25, which was on the 22nd and was a ~~meeting~~ meeting of the general manager's committee, ~~and~~ I get the feeling in reading that that you, as general manager, at this point, were somewhat concerned about the administration opinion arriving at the point of that meeting ~~that~~ about one developer, and that you put the brakes on and that you said simply, "He'd better get a rationale for what we are doing here and ~~that~~ we'd better get in touch with the other developers and we'd better get some submissions."

And I think that if I sense that document at all, I feel that you are the one responsible for suddenly saying, "He'd better really get looking at where we are going here," because I think the administration coming to almost a conclusion on one developer ~~is~~

H-2473-1

September 12, 1973
10:10 - 10:15 p.m.
B.G.

(Mr. R.G. Hodgson)

~~we better & really get looking at there we're going have however~~
~~I think the administration coming to almost a conclusion on one~~
developer somewhat caused you a concern at that moment, and you said -
"we'd better get more proposals and we'd better be sure of our
decision-making and our rationale ^{for} ~~or~~ doing what we're ^d ~~going~~".
Would you think there is any sense of truth in that?

Mr. Gordon: Oh, there may be some. As I mentioned to you
before

Mr. Wm. Hodgson: A modest man!

Mr. Gordon: ~~↳~~ what we were really considering at that
meeting was more than simply one developer, and the use of the old
plans. That was something that was of concern to us, as has been
mentioned; but not contained in that memo was the information that
was now available to us that Y & R might construct a building over
in the Eaton site. This wasn't contained in this memorandum, but
it was certainly knowledge of Mr. Sissons at that time, and it was
discussed at that meeting. But what I was saying here was, I thought
that the time had come where we should lay the whole thing out now,
and discuss the matter more formally with the Commission.

Mr. R.G. Hodgson: Lay it all out, before you took a
submission of recommendation to the Commission?

Mr. Gordon: That's right; really to get a decision on
which way we should go, and this was basically what was done with
the Chairman after the logistics memo was written on November 25th.

Mr. R.G. Hodgson: You see, sir, I have seen the memos and
the letters of the other developers asking for when Hydro is going
to get going on this and (that) sort of thing, and I ~~can~~ kind of
sense that they were almost being delayed in making any process up
until about November 22nd, and that's why I came to the conclusion
that you suddenly put the word go for the other proposals to come
in and were exercising what I think is your responsibility of saying -
"Let's get a real look at this thing before we go ahead".

September 12, 1973
10:10 - 10:15 p.m.
B.G.

Mr. Gordon: Well it was - yes, it certainly was at that time. Actually, it was after the ~~memorandum~~ memorandum of November 25th and the meeting with the Chairman, on that day or the next day, I guess it was, that we started to move on it.

Mr. Shibley: Mr. Hodgson, just to help you on that, Mr. Tatham of Y and R said that he was told that there was going to be an important decision made on the 22nd (November), sometime earlier in November, and that they should wait on that. That was in Mr. Tatham's evidence, so it goes to the same ~~fact~~ ^{effect}, just to -

Mr. R.G. Hodgson: Yes, that's right. Yes, I really think that you, in assessing what your administration colleagues have been doing, became somewhat concerned at the direction and the trend that had been almost set before you in that meeting and up to that date, and you were the fellow who put the engine into gear to bring in the other proposals and really to ~~take a~~ take a look at this whole thing. I really feel that, because I haven't seen otherwise anyone else who has done it, and yet I sense that was really done within Hydro.

Mr. Gordon: Well, it was certainly done within Hydro. Mr. Sissons actually ~~a~~ suggested that in his memorandum of November 2nd, to

Mr. Shibley: We can't leave that, Mr. Gordon, if I may Mr. Hodgson. Mr. Sissons did suggest it on November 2nd, ^{ed} there seem^{ed} to be a reversal of form in his notes of logistics of November 25th. In the interim, your own comments at the meeting of November 22nd seem to, as Mr. Hodgson said, put the brakes on the idea of going with one developer, and also, of course, these developers ~~of course~~, the evidence indicates, had become aware that Hydro was going this way, and ~~the~~ combination of your putting the brake on in that last paragraph that Mr. Genest has spent three ~~month~~ months trying to register with us, and the fact these other developers, having got wind of what was going on, ^D ~~combined~~ to have at least alternative proposals placed before the Commission in December and January of that year. Isn't that so?

Mr. Gordon: Yes, that was certainly the time. It was November 22nd or November 25th that we made the final decision to move that way.

Ne September 12, 1973
10:10 - 10:15 p.m.
B.G.

H-2473-3

Mr. Shibley: I would like to ask you - yes - just to establish it, these replies to the questions that Mr. Bullbrook dealt with, I would like an understanding of who bears responsibility on an individual basis, in the sense of what persons within Hydro have ~~responsibi~~ responsibility for the accuracy of the content of these replies?

~~██████████~~

⁴
(Tape H-247~~2~~ follows)

Sept. 12/73
10:15-10:20 pm
PLG

(Mr. Shibley)

~~Person with the responsibility for the accuracy
of the content of these responses~~

Mr. Gordon: Well, it depends on the part of the organization that actually prepares them. We have inquiries coming into the Chairman's office and from the Legislature all the time. Some of those come down through my office, some of them go directly in the area where the question is involved, and it is a responsibility of the party preparing the answer really.

Mr. Shibley: In the ultimate, do I take it that the Chairman remitted these answers to the Premier? I'd like to ~~be~~ know where ~~very~~

Mr. Gordon: Yes. He sends most of them, but not all of them.

Mr. Shibley: Is he then the person who bears responsibility in the ultimate for the precision and accuracy of *the answers.*

Mr. Gordon: I wouldn't put it all on his shoulders, sir.

Mr. Shibley: Your counsel is nodding yes. I just want to know where the responsibility for these answers rests, in terms of individual responsibility. I can't help, I must say, being impressed with Mr. Bullbrook's interest in why these answers were put in this form, and I'd ~~ix~~ like to know who has to answer for the form the answers take within Hydro.

Mr. Gordon: Well, it depends. Some of them would come down through my office. I would check them going through and on through to the Chairman. Some I prepare myself for him. Some are prepared throughout the organization, but I suppose you might say the last person through whose hands they pass actually takes the final authority, which would be the Chairman. Let's not place all that responsibility for every word that is in one of these things.

Mr. Shibley: No, I realize that, but I think Mr. Bullbrook,

Mr. Genest: Perhaps I can assist on this.

Sept. 12/73
10:15-10:20 pm
PLG

Mr. Chairman: Well Mr. Genest, again, I was going to ~~say~~

Mr. Genest: No, I have got some information ~~and~~

Mr. Chairman: All right, then. I was going to give you an opportunity of asking Mr. Gordon ~~any~~ clear-up ~~any~~ questions.

Mr. Genest: What I am told of that particular answer, when it was first put to the Premier, I understand that the Premier said:

"I will inquire from the Chairman of Hydro."

I don't think in the light of that. ~~and~~

Mr. Shibley: No, that is the point.

Mr. Genest: ~~Yes~~ I think the ultimate responsibility is on the Chairman.

Mr. Shibley: Yes. Thank you.

Mr. Genest: It is done much like a minister. I suppose if a minister answers a question for his department, he bears the ultimate responsibility ~~for the question~~ for the answer, I should say.

Mr. Chairman: Well I didn't want ~~your~~ your fire to consume your duty. Have you any questions that you ~~a~~ want to clarify with Mr. Gordon? Any other member of the committee?

Mr. Genest: No.

Mr. R. G. Hodgson: Yes, Mr. Chairman.

Mr. Chairman: I am sorry, Mr. ~~Chairman~~ Hodgson. I thought you were through.

Mr. R. G. Hodgson: No. Mr. Gordon, we have some indication that there had at different times, been discussed the possibility of ^acorporation~~s~~ being set up with the Commission as the directors in some of the documentation and evidence of Mr. Moog of Canada Square. Had you heard of this at any time?

Mr. Gordon: No. This wasn't a ~~was~~ serious thing as far as we were concerned. I hadn't heard about it.

Mr. R. G. Hodgson: ~~Even~~ Even if it wasn't a serious thing, had it come to your attention that such a proposal was being considered in any way?

Mr. Gordon: No.

~~Max~~

Sept. 12/73
10:15-10:20 pm
PLG

Mr. R. G. Hodgson: Had the possibility that Hydro pension funds might be invested, such as the memo of October 25 to Mr. Dean, Exhibit 38, in which the questions were put by, I presume, Mr. Dean to Mr. Raney, raising certain questions regarding the possibility of funds going into investing money in the building, either on the first mortgage, lease-back, or special issue of Hydro securities? You were aware of that.

Mr. Gordon: Oh, yes, I was aware of that.

Mr. R.G. Hodgson: Hadn't there been any indication that the Hydro pension funds would be used in any way, as far as you knew, towards the construction or the financing of this building, either in interim financing or in the long-term financing?

Mr. Gordon: No.

Mr. R.G. Hodgson: Thank you.

Mr. Chairman: Any other questions? Thank you very much, Mr. Gordon. ~~XXXXXXXXXX~~

Gentlemen of the committee and ^{the} counsel, the scheme for tomorrow will be ~~the~~

Mr. Genest: Mr. Chairman, before you settle on that definitely, I have a serious request to make to the committee, which I would ask you to ~~consider at least, and that is this:~~
~~that having heard Mr. Gordon's evidence tonight, which touched~~
~~on the management and the~~

Tape H 2475 follows

Sept. 12, 1973
10:20 - 10:25 pm
JLP

(Mr. Genest)

consider at least and that is this, that having heard Mr. Gordon's evidence tonight, which touched on the management and the sort of senior level of questions that occurred to the member, I wonder if the Committee would consider whether ~~it~~ really needs to hear from Mr. Gathercole. Mr. Gathercole has an important engagement in Sudbury tomorrow, ~~and~~ he is, of course, at the service of the Committee. If the Committee wants to hear him, they'll cancel ~~it~~. But it's an important one that he would like to make. Mr. Gathercole has been in the box I think on four separate occasions, one occasion for five or six consecutive [^] I think more than that [^] days, and I wonder if in the light of the information ^{that} ~~which~~ was obtained tonight from Mr. Gordon, to which I am sure Mr. Gathercole has very little to add, I wonder if the Committee might reconsider whether it needs Mr. Gathercole tomorrow, and if it wishes to do that "in camera" I'd be quite delighted to leave the room.

Mr. Chairman: My concern is that all of the Committee members are not here. Now that's not Mr. Gathercole's fault or your fault, but Mr. Renwick, I think, has indicated ~~—~~ has he indicated to you - I think ^{if} ~~my~~ memory is right he indicated he ~~would~~ had one or two questions for Mr. Gathercole.

Mr. R.G. Hodgson: Mr. Chairman, I indicated earlier I had one or two questions which arose out of Mr. Dillon's discussion with Mr. Gathercole because I really hadn't recalled up until now that Mr. Gathercole had made reference to discussing with Mr. Dillon this particular instance. And now that it was in conflict, I would like to establish Mr. Gathercole's exact recollection, so that Mr. Dillon's testimony of today would be substantiated.

Mr. Bullbrook: Surely we - may I say that, I can only speak for myself, I accept Mr. Dillon's evidence *entirely*.

Mr. R.G. Hodgson: I do too, but I think the thing is that it was on the basis that it conflicted with Mr. Gathercole's that counsel for Hydro approached Mr. Dillon to remind him that Mr. Gathercole had a different opinion, and I'd like to have that established. I don't care if it's established by a written form

(Mr. G. HADGSON)

by Mr. Gathercole for submission to the Commission, ^{the} the Committee, or given to me even, but I'd like to question that part.

Mr. Chairman: I think there are two or three things that ^I I appreciate your concern.

Mr. Bullbrook: Can we help on Friday?

Mr. Chairman: I was going to say ^{that} tomorrow morning, first thing, Mr. Gathercole, then —

Mr. Genest: * If you want him back, it's going to be, — you know, it might as well be tomorrow morning.

Mr. Chairman: Let's do it first thing. He can take an aeroplane, I guess, up to Sudbury. I don't know whether he has, —

Mr. Genest: If you want him, he'll be here. I thought that in the light of Mr. Gordon's evidence you might not want him.

Mr. Chairman: No, I think we should end up with him. I hope we will be brief with Mr. Gathercole.

Mr. Bullbrook: Would it help on Friday?

Mr. Wm. Hodgson: Why couldn't ~~the committee~~ — it's pretty well established that there's going to be a summary on Monday. Why couldn't we, if we need him, why couldn't we have him in on Monday morning?

Mr. Genest: No, he's in England on Monday.

Mr. Chairman: No, and I think that we would be —

Mr. Genest: ~~No~~, if you want him back, tomorrow is as convenient as anytime.

Mr. Chairman: First thing tomorrow morning, I was going to suggest 10:15 for assembly time, but, if 15 minutes makes a difference to Mr. Gathercole, maybe we should start right at ten.

Mr. Genest: No, it won't, Mr. Chairman, ~~10:15~~ 10:30 would certainly be nicer for me.

Mr. Chairman: I'm worrying about Mr. Gathercole at this point.

Mr. Bullbrook: You won't be as mean tomorrow as you have been.

Mr. Genest: That's right, with a half an hour more sleep.

Mr. Chairman: Then followed by Mr. Lamb, ^{then} Mr. Nastich

Sept. 12, 1973
10:20 - 10:25 pm
JLP

(Mr. Chairman)

and then Mr. Dean, *and I hope —*

Mr. Shibley: Unless you want it in different order than that.

Mr. Genest: It doesn't matter. I'll see what —

Mr. Chairman: ~~Does it~~ *that order suits you?* We're getting awfully generous ⁱⁿ here.

Mr. Genest: I'll discuss that with Mr. Shibley.

Mr. Chairman: All right, but that was the suggestion,

And then, Friday [^] I hope we won't need any night sittings but we must get those four completed tomorrow because the plan is that we will hear Anson-Cartwright on Friday; the hope is that *you* will have an opportunity to review that material on —

Mr. Shibley: I have half already.

Mr. Genest: I'm hopeful we'll be pretty quick with Mr. Anson; I think the areas of disagreement are going to be pretty narrow.

Mr. Chairman: All right. Then Monday we would hear I presume a summation from Mr. Finlayson first, followed by one from yourself.

So, if that is agreeable to everybody, I think that completes the list of witnesses that I know; there may be one or two surprise witnesses overnight, not that I know of any surprise witnesses.

Mr. Genest: Tell Mr. Gathercole not to mention any names.

Mr. Chairman: But I'm hoping there will be no surprise witnesses, but every day is an adventure in this Committee.

We are adjourned until 10:15 tomorrow morning.

The committee adjourned at 10:25 o'clock.p.m.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Gregory Rice
G.D. Finlayson, QC

Vice-president, finance, Canada Square Corp. Ltd.:

W.C. Coles

General manager, Ontario Hydro:

D.J. Gordon

